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Trial

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

20-CR-188 (JSR)

5 RUBEN WEIGAND and
6 HAMID AKHAVAN,

7 Defendants.

Trial

8 -----x

9 New York, N.Y.

10 March 17, 2021
9:20 a.m.

11 Before:

12 HON. JED S. RAKOFF,

13 District Judge

14
15 APPEARANCES

16 AUDREY STRAUSS

17 United States Attorney for the
Southern District of New York

18 BY: NICHOLAS FOLLY

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25 APPEARANCES CONTINUED

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1 (Trial resumed; jury not present)

2 THE COURT: Please be seated. So for the last couple
3 of days I've been receiving complaints from various powers that
4 be that there was a camera mounted on the wall of the
5 courtroom, and I said: I don't see any camera. And now, I
6 realize that I didn't see it because my view is right on the
7 line with that device that's above the witness Plexiglas stand,
8 which blocks my view of just a little bit of the wall and
9 that's the little bit where the camera is.

10 So what's that camera doing there? Who put it up?

11 MR. BURCK: Your Honor, I'm --

12 THE COURT: Who put it up?

13 MR. BURCK: Your Honor, this is Bill Burck. I believe
14 this is a camera that was requested by our co-counsel, Ira
15 Rothken for purposes of this witness.

16 THE COURT: Is there someone here who knows anything
17 about -- this gentleman back there seems to. Come on up. You
18 can and takeoff your mask. So what's the story?

19 MR. McCLEOD: It's just a camera that was placed for,
20 like Mr. Burck said, for our co-counsel. It was placed up at
21 the start of the trial, and it's by -- the camera's by
22 Courtroom Connect.

23 THE COURT: By who?

24 MR. McCLEOD: Courtroom Connect.

25 THE COURT: And who is it focused on?

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1 MR. McCLEOD: The podium. It gives this view, sort of
2 right here, into the line.

3 THE COURT: I'm sorry?

4 MR. McCLEOD: It gives the view like a wide angle; so
5 it captures the podium, the witness and yourself, your Honor.

6 THE COURT: And I mean, if we took it off, what would
7 change from what I'm looking at right now?

8 MR. BURCK: Your Honor, we're happy to take it down.
9 One hundred percent happy.

10 THE COURT: At the break, please take it down.

11 MR. BURCK: We will, your Honor.

12 MR. TAYBACK: Sure.

13 THE COURT: And when you take it down, one of the
14 things that concerned our folks was it was put up with some
15 sort of plastic.

16 MR. McCLEOD: That tape was to not damage the
17 furniture.

18 THE COURT: Well, it better not. When it's taken off,
19 I don't want to see any marks there. I hope you guys are
20 insured.

21 MR. McCLEOD: Sure.

22 MR. BURCK: Yes. Very good, your Honor.

23 THE COURT: All right. Thank you.

24 Okay. Now, there was the question that's likely to
25 come up before the end of the day -- by the way, is the

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1 government still hoping that they will end their case by
2 tomorrow morning?

3 MS. LA MORTE: We are confident, your Honor, that we
4 will end tomorrow. We apologize. We did underestimate the
5 length of Visa direct, but we are still on track to finish
6 tomorrow. It will likely be in the afternoon, however.

7 I will tell the Court that we sat and went through our
8 remaining witnesses and believe that we have roughly three
9 hours of direct remaining of all of our witnesses, and if you
10 add in objections and the like, it will be a little bit longer,
11 but that's what we're looking at.

12 THE COURT: You're not suggesting that your
13 adversaries would object to any of your --

14 MS. LA MORTE: Of course not, because we have perfect
15 questions and perfect answers. No need to object.

16 THE COURT: All right. Because I want to tell the
17 jury at the end of today sort of what the schedule is so that
18 they're not left.

19 So now, on the defense side, assuming we finish before
20 the end of the day Thursday, you'll put your first witness on
21 the stand?

22 MR. BURCK: Yes, your Honor.

23 THE COURT: And you will tell me at the close of the
24 government's case whether either defendant is going to take the
25 stand?

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1 MR. BURCK: Yes, your Honor.

2 THE COURT: Putting that aside, how long do you think
3 your case will be?

4 MR. BURCK: Your Honor, like the government, we've
5 actually been working to try to narrow our case, to be more
6 focused. We are hopeful. We know we can't give you a firm
7 amount of time because we have to hear from the rest of the
8 Visa witness, as well as the Citibank witness today, and a
9 couple other witnesses that are out there. We are hopeful,
10 Judge, that we can get this done in a full day, between a few
11 witnesses, effectively.

12 THE COURT: Okay.

13 MR. BURCK: Yet, I don't want to promise that, Judge,
14 if something goes really strange today, we might need to add
15 additional witnesses, but we're hopeful for a day.

16 THE COURT: Is everyone comfortable --

17 MR. BURCK: And that is, of course, assuming that the
18 defendants don't testify.

19 THE COURT: I understand.

20 MR. GILBERT: And, your Honor, also, we have
21 Mr. Vilfer who is going to be deposed.

22 THE COURT: Yes, and I know I have to make rulings on
23 that.

24 So we can talk more about this because I won't
25 instruct the jury until the end of the day, but it sounds to me

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1 like I can probably tell the jury that the government's case
2 will for sure conclude on Thursday.

3 MS. LA MORTE: Yes. It may be the end of the day, but
4 it will for sure conclude on Thursday.

5 THE COURT: That the defense, it's a little less
6 clear, but we're hopeful that they'll conclude their case by
7 Friday or, worst case, Monday, and then we will have summations
8 and charge.

9 Now, in that regard, how long does -- let's start with
10 the government. How long do you want for your initial
11 summation and rebuttal summation?

12 MS. LA MORTE: For the initial summation, your Honor,
13 we're estimating between an hour and an hour and a half. Hour
14 and a half being the max that it would be.

15 Mr. Folly, what are you thinking for rebuttal?

16 MR. FOLLY: Your Honor, 45 minutes to an hour.

17 THE COURT: I'm not going to allow that much for
18 rebuttal. I wouldn't allow an hour for rebuttal. Let me,
19 before I say that actually definitively, let me found out how
20 much the defense wants for their summations.

21 MR. BURCK: Your Honor, I'm somewhat guided by your
22 guidance in the last trial we had, which I think you put it at
23 about an hour and a half, and so I think an hour and a half
24 would be fine for us.

25 THE COURT: Okay.

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1 MR. GILBERT: And that was our request as well.

2 THE COURT: So that's an hour and a half for each of
3 you?

4 MR. BURCK: Yes, your Honor.

5 THE COURT: Okay. So in light of that, I will give
6 the government 45 minutes on rebuttal, but not an hour. You
7 can anticipate on your opening summation a lot of what the
8 defense is going to say. There's no great surprises at this
9 point. So if you want an hour and 45 minutes max on your
10 opening, you can have it, and your colleague can have 45
11 minutes on rebuttal but that's as far as I'm willing to go.

12 MS. LA MORTE: Okay. Thank you, your Honor.

13 THE COURT: All right.

14 MS. LA MORTE: Your Honor, one other thing, just it's
15 vaguely related to timing. I'm just confirming on the record.
16 We spoke with both defense counsel and neither intends to call
17 Mr. Hargreaves back to the stand as part of their case, and I'm
18 saying that on the record because it's the government's
19 intention to send him home; so I just want to be one hundred
20 percent before we do that.

21 THE COURT: Thank you for putting that on the record.

22 So now the question is if the defense finishes on
23 Friday, then it's easy. I don't care when you end on Friday,
24 even if it's before our normal closing time, summations will be
25 on Monday. But let's assume we go over to Monday. We will

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1 still then start summations, after a reasonable break, maybe a
2 half hour, after the close of all of the evidence.

3 I often tell the story, I may have even told it in the
4 last trial, about one of my mentors, Judge Pollack, Milton
5 Pollack, a great judge in this court, who always began
6 summations in a criminal case five minutes after the close of
7 all the evidence. That's because it took him five minutes to
8 deny the defense motions, get a cup of coffee and go to the
9 bathroom.

10 And there was a lot to be said for that because it
11 forced both sides to focus on the real issues and not get into
12 all the extraneous stuff. Nevertheless, because I'm, by
13 nature, a generous soul, I might give you as much as half an
14 hour between close of evidence and summations. But we will
15 start because this jury was told three weeks, and it's going to
16 be a little bit more than three weeks.

17 And then if summations start and they don't finish,
18 we'll go over to Tuesday morning, and then immediately after
19 the close of that, we'll have the charge to the jury. And as
20 you know, we'll have the charging conference on Friday after
21 court.

22 Let's see. Now, I think the only thing that's liable
23 to come up this afternoon that I haven't yet ruled on is the
24 completeness issue with respect to the statement by Mr. Weigand
25 that is going to be introduced by the government.

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1 MS. LA MORTE: Yes, your Honor. That's an outstanding
2 issue. I don't know if that will arise today, but it is an
3 issue that's been -- that we still need to work through.

4 THE COURT: All right. I mean, I think I've already
5 indicated, in a general sense, that I think there is something
6 that should be added, but very little because I think the
7 defendants have misconstrued the scope of the completeness
8 rule.

9 The completeness rule is not that if you put in as
10 admissions of a party, page 2 and page 7 of the statement, that
11 opens the door to all the other 20 pages of the document.
12 Classically, it really is if you, for example, give half a
13 sentence, the other half of the sentence comes in, or if you
14 give one sentence and there are three sentences in the
15 paragraph, then the rest of the paragraph may sometimes come in
16 but not always.

17 But what the defense has requested in this regard is
18 much broader than that. Nevertheless, I think there are some
19 things that should come in under completeness, but I'll hear
20 argument on that. Given what you've just said, I don't think
21 we need to take it up right now.

22 Anything else we need to take up?

23 MR. BURCK: Your Honor, I just have one thing that I
24 raised with the government about two exhibits that I may show
25 the witness, the Visa witness. I haven't decided if I'm going

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1 to offer it into evidence, but I just wanted to raise the issue
2 with the Court because I'm conscious of my 45 minutes, and I
3 didn't want to take any time away for sidebars and such.

4 THE COURT: Yes. Well, good idea because, as you know
5 from yesterday, you won't get 46.

6 MR. BURCK: It's over at 46. Exactly, your Honor.

7 So Mr. McLeod, if you could show HAX5049.

8 And, your Honor, this is a press release by Circle,
9 which you heard about in the case, in which they announced in
10 December of 2020 -- and I'll address the date in a moment, your
11 Honor -- a partnership with Visa to do business using Circle's
12 products. It's Bitcoin products. It's actually called U.S.
13 Coin.

14 And, your Honor, the relevance of this to the Visa
15 witness -- and again, I don't know if he knows this, your
16 Honor. He may say, I don't know anything about it, and I may
17 just show it to him and see if it refreshes his recollection,
18 and he may just say it doesn't refresh my recollection, and
19 I'll drop it.

20 But if he knows about it, I'd like to ask him about it
21 because I think it's relevant to all the issues in the case for
22 a couple of reasons. And, your Honor, I know a couple of
23 things you're thinking about is the date. The reason why we
24 don't think the date matters is because, as the Court has said
25 to the jury, and everyone I think understands, the law hasn't

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1 changed at all with respect to the illegality of marijuana
2 under federal law. State laws haven't changed in the last
3 couple of years, as relevant to this case.

4 And the fact that Visa is willing to do business
5 openly with Circle, that we have shown is engaged directly with
6 Eaze, is relevant, your Honor, I think, to all of the issues
7 that we have that we're raising in the case in our defense.

8 So the idea behind this, your Honor, again, if he
9 says, no, I don't know anything about that, I'm not going to
10 ask him. Obviously, if he says, I don't know, I'm going to
11 show it to him, see if it refreshes. If it doesn't, I drop it.
12 If he says, oh, yeah, I know about this, then I may ask him
13 questions about it and may offer it into -- try to offer it
14 into evidence, your Honor.

15 And the second document that is --

16 THE COURT: Hold on with the second document. Let me
17 hear if the government has any objection, assuming it's not
18 dropped and the witness does know about it.

19 MS. DEININGER: Yes, your Honor. We would object to
20 this under rule 401 and 403 for the reasons discussed at
21 sidebar a few days ago. We think that the discussion of Circle
22 and crypto -- digital currency, wallets, is irrelevant and
23 confusing.

24 This is a document that postdates the conspiracy. It
25 has no mention of Eaze or marijuana. It is generally about

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1 Circle's base, which serves many industries. And for all the
2 reasons we previously discussed on sidebar, we would object to
3 its submission. It's also a hearsay document.

4 THE COURT: I am very doubtful I would allow this into
5 evidence, but I will allow you to at least put foundational
6 questions because if he doesn't know anything about it, then I
7 don't have to otherwise rule.

8 MR. BURCK: Okay, your Honor. Thank you.

9 THE COURT: And there was a second document?

10 MR. BURCK: Your Honor, the second document is exactly
11 the same issue.

12 THE COURT: Oh, okay. I think the government counsel
13 is correct, and I adopt by reference what I said at sidebar on
14 a similar issue a few days ago, at least it seems like a few
15 days. Maybe it's a century ago. Okay.

16 MR. GILBERT: Judge, just one other issue. We have,
17 as part of our defense case, a witness who's a private
18 investigator who made purchases through Eaze and, you know,
19 that witness we intend to call remotely, and the government has
20 consented to that. So I just wanted to alert the Court that
21 that's how we intend to proceed by that.

22 THE COURT: Yes, just to repeat what we all agreed to
23 yesterday, if the defense calls anyone remotely -- though I
24 don't believe there is then any confrontation clause issue --
25 to the extent there arguably is, the defense waives it,

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1 correct?

2 MR. GILBERT: Correct.

3 THE COURT: Very good.

4 MS. DEININGER: Your Honor, on that witness, just to
5 be clear. We have agreed that, to the extent they're being
6 called, they can be called remotely. We would, however, object
7 to testimony related to Circle related transactions for the
8 same reasons that we were just discussing.

9 THE COURT: So maybe it's time for someone to explain
10 to me what the relevance of Circle post-conspiracy activities
11 is on any issue in this case?

12 MR. BURCK: Sure, your Honor. I'm happy to start.
13 So, your Honor, as the government's case is, at least on the
14 materiality point, is that these banks say they won't allow
15 illegal transactions, that includes marijuana, nothing about
16 the changes that have occurred in state law matter to them, and
17 all that matters to them is that it's illegal under federal law
18 and that they will elicit testimony -- I think they will elicit
19 testimony on these facts that it doesn't matter anything --
20 nothing matters to them other than they don't want to do
21 business with marijuana sales because of it's illegal under
22 federal law.

23 And the scheme they've alleged is that we've -- our
24 clients have concealed, assisted in concealing the fact that
25 marijuana was happening or going through these networks in

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1 order to allow it to happen. In other words, if they hadn't
2 done that, it would not have happened.

3 The Circle/Eaze transactions, and I think the Court,
4 you saw one of the Bank of America statements that was offered
5 and admitted into evidence through the witness from Bank of
6 America, that goes directly to contradict that entire premise.
7 Because under the -- in the statements and information the
8 banks receive from Circle about Eaze, it's directly stating
9 that Circle is processing Eaze transactions on the network.

10 THE COURT: Yes, so that, part I understood, and I
11 allowed in that document, as you recall, I think over
12 objection.

13 MR. BURCK: Yes.

14 THE COURT: But, for example, the document you are
15 showing now doesn't have anything to do with Eaze.

16 MR. BURCK: Your Honor, it doesn't have anything
17 directly to do with Eaze, but it has to do with the concept of
18 a wallet. And the wallet issue -- and I think that the Bank of
19 America witness testified to this. I'm going to ask
20 Mr. Elliott a bit about this to see what he says about it, too.
21 They seem to think there's a distinction with a wallet because
22 they say, well, a wallet is kind of like an ATM, and the
23 government actually argued this, I think, to the Court.

24 It's like an ATM, where you take money out of your
25 ATM, you buy whatever you want with it. Nobody knows what you

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1 do with it. Our point is that's not actually what happens with
2 a wallet. In fact, you can look at the information that goes
3 to the bank, and the information that goes to the bank says
4 Circle is doing business on behalf of Eaze. And Eaze, they all
5 know, is a marijuana marketplace.

6 THE COURT: Well, I can see your putting questions
7 along those lines, but I don't see any -- the problem is, like
8 the document the other day, this is all about cryptocurrency
9 and stuff like that.

10 MR. BURCK: Your Honor, that's -- I think, actually,
11 maybe we can put up HAX11009, Mr. McLeod.

12 Because I think this will -- this is really what we're
13 trying to elicit, your Honor, and this is in evidence. So,
14 your Honor, this is the --

15 THE COURT: Yes, isn't that already in evidence?

16 MR. BURCK: That's in evidence, your Honor. And our
17 point is that the descriptor, which says: Circle Wallet Eaze
18 11/07 purchase, London, is clearly putting the banks on actual
19 unimpeded notice.

20 THE COURT: That's why I let it in.

21 MR. BURCK: Right.

22 THE COURT: So you could make that argument, but I
23 still don't see how that relates to the document you just
24 showed me that you wanted to admit if you can lay a foundation
25 for that.

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1 MR. BURCK: Sure, your Honor. I think what it tells
2 us is that the Circle is -- the concept here is that the banks
3 don't want to have anything to do with marijuana, no how, no
4 way. This is actually in their policy. Their policy actually
5 says that, and actually the Visa policy says that, no
6 transactions involving marijuana at all, no debit card, no
7 credit card.

8 This is a debit card that they used something called
9 Circle and, effectively an intermediary, to allow them to then
10 process marijuana. The point is that Circle -- the business of
11 Circle is to provide a currency that will then be allowed to be
12 used by anybody in the Visa network to buy anything they want,
13 apparently, including marijuana, which is illegal, according to
14 Visa. So the fact is, they are allowing an entity to step in,
15 to allow and facilitate marijuana transactions --

16 THE COURT: I think that's a different issue. I think
17 that's totally different from what we have here. The exhibit
18 that's on the screen right now, this is what?

19 MR. BURCK: This is Akhavan Exhibit 11009, your Honor.

20 THE COURT: You have the bank, arguably, being told
21 directly that Eaze is involved. They know Eaze is a marijuana
22 company and, therefore, the argument is they don't really care,
23 this is all immaterial.

24 The document you showed me earlier is all about -- at
25 least the little bit I saw of it, it's all about just the

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1 general nature of Circle. You know, I do not see why that is
2 relevant.

3 MR. BURCK: Your Honor, fair enough. I think that
4 the -- and I think I understand where the Court's going, and I
5 understand what your concerns are.

6 With respect to the Circle witness that we propose for
7 the defense case, we would want to focus literally on the
8 transactions that Circle has processed on behalf of Eaze
9 through U.S. issuing banks.

10 THE COURT: That's fine. I'll hear any objections at
11 the time that the government has. That's fine.

12 MR. BURCK: I'll limit it to that then, your Honor.

13 THE COURT: All right.

14 MR. BURCK: Your Honor, if I can ask him, though,
15 about wallets and then see what he says?

16 THE COURT: I'll let you go a question or two.

17 MR. BURCK: I may be running out of time anyway, your
18 Honor, and then I'll just skip it.

19 THE COURT: Okay. Let me ask my law clerk to tell my
20 courtroom deputy to bring up the jury.

21 MS. LA MORTE: Your Honor, should we have the witness
22 ready to go on the screen?

23 THE COURT: Sure.

24 (Jury present)

25 THE COURT: Please be seated. Good morning, ladies

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Elliott - Cross

1 and gentlemen, and welcome back. So getting down to the
2 important things, juror No. 6 is more muted today but, by
3 contrast, juror No. 5, for example, is in a wonderful green
4 outfit; so that will make my day sufficiently.

5 All right. We are ready to continue.

6 MR. BURCK: Thank you, your Honor.

7 CROSS-EXAMINATION

8 BY MR. BURCK:

9 Q. Mr. Elliott, good morning. I know it's very early for you.
10 Can you hear me okay?

11 A. I can, yes. Thank you.

12 Q. And you can see me as well?

13 A. I can, yes.

14 Q. Okay. And is there anything changed with your ability to
15 see the various people that you testified that you could see
16 yesterday?

17 A. I can see everyone clearly, yes.

18 Q. Okay, great. And if there's a problem with hearing me,
19 please let me know. And one last thing, I may have to ask you
20 sometimes to repeat things because the court reporter may have
21 a hard time hearing you. Okay?

22 A. That's fine.

23 Q. Okay. Thank you.

24 Let me start with showing the witness Government
25 Exhibit 2218, just for the witness. And can you show him the

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Elliott - Cross

1 second page as well.

2 Mr. Elliott, do you --

3 A. Am I supposed to look in the binder or is it going to be on
4 the screen?

5 Q. It should be in the binder.

6 A. I see 2217.

7 Q. You don't see 2218?

8 A. Oh, okay. Okay, yes. I do see it now. Thank you.

9 Q. Do you recognize that document?

10 A. I do, yes.

11 Q. What is it?

12 A. It's a summary of the Visa payment network.

13 MR. BURCK: Your Honor, we'd offer Government
14 Exhibit 2218.

15 MS. DEININGER: No objection.

16 THE COURT: Received.

17 (Government's Exhibit 2218 received in evidence)

18 BY MR. BURCK:

19 Q. So, Mr. Elliott, as you said, it's a schematic of Visa's
20 processing system; is that right?

21 A. It is, yes.

22 Q. Now, on the far right-hand corner there's merchants and
23 acquiring banks, right?

24 A. There are merchants and acquiring banks, yes.

25 Q. Okay. And in that scheme, the merchant's point of contact

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Elliott - Cross

1 in the Visa network is the acquiring bank, right?

2 A. Acquirers are responsible for the merchants, and yes, they
3 typically work together.

4 Q. Okay. And the contract that exists between the merchant
5 and anyone on the Visa network is with the acquiring bank,
6 right?

7 A. The acquiring banks do establish those contracts, yes.

8 Q. Okay. Now, you testified the acquiring bank is responsible
9 for the merchant; is that right?

10 A. Acquiring bankers are responsible for their merchants.

11 Q. And that means they're solely responsible for the merchant
12 in the context of the Visa network, right?

13 A. Well, the acquirers are responsible for the merchants, but
14 the merchants are also responsible for complying with the Visa
15 rules, and the agents that they use are also responsible for
16 making sure that both they and their merchants comply with the
17 rules.

18 Q. Okay. But the merchant banks, the acquiring banks, are
19 ultimately responsible for what the merchants do in the
20 network, correct?

21 A. The acquirers are ultimately responsible under the Visa
22 rules, yes.

23 Q. And you testified yesterday that the merchants sponsor the
24 acquiring bank in the network, right?

25 A. Acquirers do sponsor merchants, yes.

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Elliott - Cross

1 Q. Okay. Now, the acquiring bank collects a lot of
2 information from the merchant during the on-boarding process;
3 isn't that right?

4 A. Well, the acquiring banks will or their agents will.

5 Q. All right. But somebody, either the acquiring bank or the
6 agents, will acquire information from the merchant, correct?

7 A. Acquirers or agents will do that job, yes.

8 Q. And they learn about, for example, the type of business the
9 merchant's in, right?

10 A. Well, based on what the merchant provides on the merchant
11 application, the agents and the acquirers make those
12 determinations.

13 Q. So that's a yes, they learn about what the business is of
14 the merchant?

15 A. Well, can you restate?

16 Q. I'm asking, do they learn about the type of business the
17 merchant is involved in when they on-board the merchant to the
18 system?

19 A. They do they make that attempt, yes.

20 Q. And they receive, often, websites and URLs about the
21 merchant, correct?

22 A. Based on what is provided on the application, they do.
23 They should be reviewing that, yes.

24 Q. And they get what's generally known as KYC, or know your
25 customer, information, right?

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Elliott - Cross

1 A. They gather a lot of that from the merchant application.

2 Q. And the merchant application is something that is submitted
3 to the acquiring bank, correct?

4 A. It's submitted to the -- well, it depends. It depends on
5 how that acquiring bank is set up. If the acquiring bank does
6 not use any agents, then it goes directly to the acquiring
7 bank. If they use agents, it may go to the agents, and then
8 ultimately the acquiring banks should look at it, but they may
9 not in every case. They may have set some type of established
10 allowable merchants and prohibited merchants, and if it's an
11 allowable merchant, they may not look at everything on that
12 application.

13 Q. Okay. But --

14 A. They may have given the agent authority to sign certain
15 low-risk merchants, and certain high-risk merchants may need to
16 be reviewed by the bank, or what we say, they must concur on
17 the approval.

18 Q. The acquiring bank receives the application file or these
19 other third-party agents, right, receive the application file,
20 correct? Yes or no?

21 A. Can you say that again? I'm sorry.

22 Q. The acquiring bank or the agents that you just testified
23 about, receive the application file from the merchant; yes or
24 no?

25 A. Yes, they do.

L3HPWEI1

Elliott - Cross

1 Q. And the application file does not go to the Visa network or
2 to the issuing bank; yes or no?

3 A. It does not go to Visa or the issuing bank.

4 Q. So the application file, as far as you know, remains with
5 the merchant bank or the acquiring bank or the agents; yes or
6 no?

7 A. It does, yes.

8 Q. Now, all of these on-boarding responsibilities are with the
9 acquiring bank or its agents, correct?

10 A. Yeah, the on-boarding responsibilities are definitely with
11 the acquiring bank or its agent, yes.

12 Q. And the acquiring bank can't delegate or assign those
13 responsibilities to someone else in the network, right?

14 A. Can you say that again? I didn't quite hear if you said
15 "can" or "can't."

16 Q. Can't, cannot.

17 A. Well, look, I think, as I described earlier, the acquiring
18 bank, if they're working with an agent, may set out parameters
19 that allow an agent to on-board certain types of merchants.

20 And so it's common place that an acquirer might say
21 that you can sign a restaurant that does less than 100,000 a
22 month without our concurrence. But if you're signing a
23 higher-risk merchant or an entity above a certain volume, then
24 we want to see all the paperwork.

25 Q. Okay.

L3HPWEI1

Elliott - Cross

1 A. So it all depends on the individual circumstances.

2 Q. The agents who the acquiring bank may use, as you just
3 testified, they work for the acquiring bank in some agency
4 capacity, correct?

5 A. They do, yes.

6 Q. Okay. Now, you testified about what information does go
7 from the merchant bank on through to Visa and the issuing bank.
8 Do you recall you testified what information that is, right?
9 That's a "yes" or "no" question. I'm asking, just do you
10 recall testifying to that?

11 A. Well, I'm not following your question.

12 Q. Do you recall testifying about information that goes from
13 the merchant, an acquiring bank, into the network, to the
14 issuing banks?

15 A. Well, you're using the word "information." I testified
16 about transaction information.

17 Q. Okay.

18 A. That's based off of what is transmitted electronically
19 through a terminal. That's what I was referring to.

20 Q. Right.

21 A. Nothing to do with a merchant application, sir.

22 Q. Right. Understood. So the information, the transactional
23 information that you testified about, was the following: the
24 merchant's name, correct?

25 A. Yes.

L3HPWEI1

Elliott - Cross

1 Q. The merchant descriptor, correct?

2 A. The merchant descriptor includes the merchant name. It's
3 the holistic category.

4 Q. The MCC code, correct?

5 A. Correct.

6 Q. The location of the merchant, correct?

7 A. There's a city and the state field. That's what I meant,
8 yes.

9 Q. A location, right?

10 A. Well --

11 Q. City and state is the location?

12 A. The state -- yes, state is a location, but --

13 Q. Okay.

14 A. -- that's my definition.

15 Q. Okay. And the amount of the transaction, correct?

16 A. Correct.

17 Q. And there's credit card or debit card information specific
18 to the card, right?

19 A. And the card -- well, the card number.

20 Q. The card number. And then the country code, right?

21 A. Yes.

22 Q. Now, if you turn to the second page, Mr. McLeod. If you
23 could highlight No. 5 in the flow, on the right-hand side.

24 So now you testified --

25 A. You said Mr. McLeod, is that --

L3HPWEI1

Elliott - Cross

1 Q. Mr. McLeod is the person who's showing the jury
2 information. So this is now the second page of the document
3 you have.

4 A. Okay, got it.

5 Q. So if you see No. 5 in the left-hand circle?

6 A. I see that.

7 Q. It says: "Card issuer approves or declines the
8 translation." I think it meant to say "transaction," but the
9 title of this is "Transaction message flow," right?

10 A. It is.

11 Q. And you testified that the process of a card being
12 submitted for a transaction and then being approved for the
13 transaction takes place in nanoseconds, right?

14 A. I did.

15 Q. And No. 5, the card issuer approves or declines the
16 transaction, that's where -- that's the spot where the issuing
17 bank decides whether or not to approve the transaction,
18 correct?

19 A. It is.

20 Q. And now, based on your experience, you are aware of the
21 criteria that are used by issuing banks to authorize or not a
22 transaction, right?

23 A. I'm aware of it, yes.

24 Q. And that includes the credit limit that the card has,
25 correct?

L3HPWEI1

Elliott - Cross

1 A. It does include the credit limit, yes.

2 Q. And for debit cards, whether you have enough money in your
3 account, correct?

4 A. That's one of the things that issuers would look into if
5 it's a debit card, yes.

6 Q. And there's also indicia of whether or not there's fraud
7 associated with the transaction, correct?

8 A. Say that again?

9 Q. Does the card issuer consider indicia, indicators, of fraud
10 when it decides whether or not to authorize a transaction?

11 A. They do, yes. They try to.

12 Q. And the fraud they're concerned about is fraud on the
13 cardholder, correct?

14 MS. DEININGER: Objection. Foundation.

15 THE COURT: Overruled.

16 Q. You can answer the question. The fraud they're concerned
17 about is fraud on the cardholder, correct?

18 A. When it comes to fraud, they're concerned about whether or
19 not the cardholder is actually engaging in that transaction.

20 Q. Thank you. And sometimes the bank will call the cardholder
21 or contact the cardholder to find out, are you engaged in this
22 transaction, correct?

23 A. Sometimes they will, yes.

24 Q. And as far as you know, based on your experience with the
25 Visa network, when they do that, they don't ask the cardholder:

L3HPWEI1

Elliott - Cross

1 Are you buying an illegal product, correct?

2 A. Well, I wouldn't be able to, you know, tell you one way or
3 another because I've not been, you know, on any of those calls.
4 They may ask the cardholder any question they want. I just
5 don't know if they ask that question or not.

6 Q. Okay. You don't know one way or the other, correct?

7 A. I don't know.

8 Q. And you know, though, that they don't ask the cardholder
9 what product they bought, correct?

10 MS. DEININGER: Objection. Foundation.

11 THE COURT: Sustained. Lay a foundation, if you can.

12 MR. BURCK: I'm sorry, lay a foundation?

13 THE COURT: Yes. Sorry.

14 MR. BURCK: Sorry, your Honor.

15 BY MR. BURCK:

16 Q. When the product is purchased, or they attempt to purchase,
17 on the system and you testified that the issuing bank may call
18 the cardholder, what types of questions do they ask, as far as
19 you're aware?

20 A. Well, I would say this, though. Things have changed
21 dramatically over the years. There's an alert system in place
22 now; so the use of calls is, in my opinion, is greatly
23 minimized. It may have been something that happened years and
24 years ago, but it's infrequent for something like that to ever
25 happen. It's more of they use an alerting system.

L3HPWEI1

Elliott - Cross

1 So cardholders may sign up for fraud alerts, and if
2 something comes through on their account, they'll get an alert
3 on their phone or an e-mail. And if the cardholder, you know,
4 looks at it and doesn't recognize it, then it turns things
5 around so that the cardholder is then contacting the issuing
6 bank to say, hold on, this one looks weird to me. I probably
7 didn't do this.

8 And so I see where you're going with the whole notion
9 of calling, but that doesn't happen anymore. That's something
10 from decades ago.

11 Q. Okay. So alerts?

12 A. Things have changed. There are alerts.

13 Q. There are alerts, which are texts or e-mails or something
14 along those lines --

15 A. Correct.

16 Q. -- correct? And those alerts, to your knowledge, you just
17 testified about them, they do not request information about
18 what product you bought, correct?

19 MS. DEININGER: Objection. Foundation.

20 A. I --

21 MR. BURCK: There's an objection. You have to wait
22 until the Judge rules.

23 THE WITNESS: Okay. Sorry.

24 THE COURT: Overruled.

25 Q. So you can answer that question. The alerts that you just

L3HPWEI1

Elliott - Cross

1 testified about, do they request -- to your knowledge, do they
2 request information from the customer on what they bought?

3 A. I have not -- I'm not the party that set up the alert
4 system --

5 Q. Sir, I'm sorry to interrupt. That's not my question. My
6 question is, do you know, do the alerts ask the customer what
7 they bought? That's my question.

8 A. I don't know if they do.

9 Q. Okay. Thank you.

10 A. And I --

11 Q. So --

12 A. Yeah.

13 Q. You don't know?

14 A. I don't know that they do, no.

15 Q. Okay. Thank you. Now, you testified about the merchant
16 name being an important factor and the descriptor being
17 important, right?

18 A. I did.

19 Q. And the central purpose of having the name and the
20 descriptor is to get those to the cardholder, ultimately?

21 A. The central purpose of the name is to aid the cardholder in
22 the recognition of the transaction when they look at their
23 statement at the end of the month, so that they realize that
24 this is a charge that they actually engaged in.

25 Q. And this helps reduce fraud in the network, right?

L3HPWEI1

Elliott - Cross

1 A. It helps reduce disputes in the network.

2 Q. Disputes --

3 A. The transaction --

4 Q. Sorry, go ahead.

5 A. Transactions that may not be recognized.

6 Q. Disputes between the cardholder and the issuing bank,
7 right?

8 A. Disputes between the cardholder and the merchant that is
9 billing them.

10 Q. The cardholder and the merchant. Understood.

11 Now, let's turn to just Visa generally. Visa is a
12 for-profit business, right?

13 A. It is, yes.

14 Q. And you issue shares on the stock exchange?

15 A. We do, yes.

16 Q. And you generate revenue and profit from this network that
17 we've talked about, right?

18 A. We do.

19 Q. And you testified that Visa is an electronic super highway;
20 do you remember that?

21 A. I do.

22 Q. And is it fair to say that Visa charges tolls on that
23 highway, like you would with a normal highway, in order to pay
24 for the infrastructure and generate revenue, right?

25 A. Well, Visa has fees built into the network and certain

L3HPWEI1

Elliott - Cross

1 transaction fees, I'm not an expert on all of them, but yes, we
2 do earn revenue from the operation of our network.

3 Q. And you want Visa cards to be used more, rather than less,
4 in the network, of course, right?

5 A. Well, yes. You know, widespread acceptance is a positive
6 thing for our business, yes.

7 Q. So higher volume of use of cards means more revenue
8 ultimately for Visa, correct?

9 A. Higher volume generates higher revenue, yes.

10 Q. All right. Let's please put up for the witness what's in
11 evidence as Government Exhibit 2203, and we go to page 18.

12 And -- sorry, one second.

13 So if you look at the very top of that page, Program
14 Violations -- and you can highlight for the jury.

15 Are you there, Mr. Elliott, page 18 of 2203?

16 A. I'm lost. One moment.

17 Q. Sure.

18 A. Sorry, I have to get used to your tab system here. Okay.
19 Under B, I think I have it.

20 Q. Is it page 18 of the lower right-hand side of the page?
21 You know what, just to speed this along, why don't you just put
22 it down, and I'll ask you a couple of questions, since you
23 testified about this yesterday.

24 Do you recall that there's a global brand protection
25 guide for acquirers, right?

L3HPWEI1

Elliott - Cross

1 A. I do, yes.

2 Q. And you recall that you testified that a transaction must
3 be lawful in both the seller's and the buyer's jurisdictions,
4 correct?

5 A. They must be lawful in the buyer and seller jurisdiction.
6 I did, yes.

7 Q. Okay. Now, you also understand, based on your experience
8 and knowledge of this manual, that nothing in the manual
9 specifies what happens when something is legal in a state
10 jurisdiction but illegal under federal jurisdiction, right?

11 A. Can you repeat that? Someone was handing me your
12 attachment when you said that.

13 Q. Sure. You would agree with me, based on your experience
14 and your knowledge of this manual, that it says nothing about
15 what happens if something is legal in a state jurisdiction but
16 illegal under federal jurisdiction, right?

17 A. We don't break out the difference between state and federal
18 jurisdictions in the guide.

19 Q. Okay. Now, do you have the document in front of you at
20 this point?

21 A. I have a document that's titled Section 5, Program
22 Violations, and it's page 18 of this guide.

23 Q. Okay. Can we go to page 7 of the guide?

24 A. I believe I have that as titled Section 2, Visa Global
25 Brand Protection Program; is that correct?

L3HPWEI1

Elliott - Cross

1 Q. That's correct.

2 A. I have it.

3 Q. And you testified -- and we can blow up the first
4 paragraph.

5 You testified about this language yesterday; do you
6 recall that?

7 A. I do, yes.

8 Q. And it lays out certain things that are specific
9 challenges, and we can highlight that language for the jury.

10 Specific challenges include risk presented by online
11 merchants selling illegal or miscoded online gambling,
12 prohibited pornography, and then it goes through examples,
13 contraband tobacco, illegal or counterfeit pharmaceuticals, and
14 some other things, and it ends up with illegal sale of any
15 other products or services, right? Do you see that?

16 A. I see that, yes.

17 Q. And you testified yesterday that it does not specifically
18 say anything about marijuana, right, specifically about
19 marijuana?

20 A. It does not specifically mention marijuana, no.

21 Q. And you testified yesterday that these things represent the
22 biggest risks -- those were words, I believe -- to Visa based
23 on some criteria you use, right?

24 A. These are the highest risks that we see today based on the
25 impact they have on the payment system, the volume of the

L3HPWEI1

Elliott - Cross

1 activity and specific rules that apply to Visa and its clients.

2 Q. So fair to say, based on the analysis that you've done,
3 contraband tobacco, for example, or illegal or counterfeit
4 pharmaceuticals or online gambling, for that matter, are more
5 risky than marijuana?

6 A. More risky than marijuana? I think that -- I would explain
7 it this way. We use a risk-based approach to protect the
8 integrity of the payment system, and we focus our resources in
9 a proactive and reactive manner. We do not ignore illegality
10 on the network. If we come across or get tips on something
11 illegal, like marijuana, we'll pursue it, but it's not the
12 primary focus of our program.

13 Q. Thank you.

14 A. And these other items are.

15 Q. Those other items are, is that what you said?

16 A. Yes, sir.

17 Q. Thank you. Can we put up Government Exhibit 2217, which is
18 in evidence, and if we can highlight for the jury -- and,
19 Mr. Elliott, I'd ask you to look at the first paragraph under
20 the heading Marijuana, and then highlight that for the jury,
21 please.

22 You testified about this document yesterday, and you
23 said, I believe, that this represents Visa's internal policies
24 about marijuana sales, correct?

25 A. Yeah, let me read it for one moment. All right. Yes, I

L3HPWEI1

Elliott - Cross

1 did testify about this yesterday, and it is our position.

2 Q. Okay. And it says: Visa's official position, correct? Is
3 that what it says?

4 A. It does.

5 Q. And then it goes on to have a quote, correct? You
6 testified about that quote yesterday, right?

7 A. It does, yes.

8 Q. Now, if we turn to page 2, at the bottom of that page,
9 there's a question in this, at the very bottom of the page.

10 And the question is --

11 A. I see, yes.

12 Q. Page 2. Are debit transactions okay for the sale of
13 marijuana? Right?

14 A. I see that, yes.

15 Q. And the answer is on the next page: No, Visa prohibits all
16 transactions involving the purchase and sale of marijuana from
17 being entered into the Visa payment system. Correct?

18 A. That's correct.

19 Q. So, to you, does that mean that Visa does not allow debit
20 cards, correct?

21 MS. DEININGER: Objection. Vague.

22 Q. Does not allow debit cards for marijuana transactions,
23 correct?

24 THE COURT: Are you asking him --

25 A. The --

L3HPWEI1

Elliott - Cross

1 THE COURT: Excuse me. Are you asking him about
2 instances where Visa knows it's being used for marijuana?

3 MR. BURCK: Yes, your Honor. I'm asking only whether
4 or not they knowingly allow debit card.

5 THE COURT: Okay. Go ahead.

6 Q. So, Mr. Elliott, to your knowledge, does Visa knowingly
7 permit debit cards to be used to purchase or sell marijuana?

8 A. Well, Visa prohibits the sale of marijuana on its network
9 for debit cards or credit cards. It's any Visa branded payment
10 product. And that would surely apply to the acquiring banks
11 that are not supposed to sign merchants that sell illegal
12 products. That's how it all folds together.

13 Q. Understood. And the next question under it is -- and you
14 can blow that up -- What if a merchant is selling a gift card,
15 certificate or voucher that can be used to purchase marijuana?
16 Do you see that question?

17 A. I do, yes.

18 Q. And then it says the same thing it said above: Visa
19 prohibits all transactions involving the purchase and sale of
20 marijuana. Right? Disguising the transaction as a gift card
21 or other quasi-cash sale violates Visa rules, right?

22 A. Yes.

23 Q. And this is your understanding of what Visa's policy is,
24 correct?

25 A. It is.

L3HPWEI1

Elliott - Cross

1 Q. Now, you testified that in -- you can take that down,
2 Mr. McLeod -- that in the various policies and rules, outside
3 rules, rules that go to acquirers, to people outside of Visa,
4 that no specific mention of cannabis is made, correct?

5 A. Cannabis is not mentioned specifically in the rules, no.

6 Q. Okay. And I'd like to show the witness Government
7 Exhibit 2204 that was entered into evidence yesterday. And you
8 recall testifying about this document, correct?

9 A. Well --

10 Q. I'm sorry, it's Government Exhibit 2204. It's a
11 presentation by Elizabeth Scofield?

12 A. Yes, I see it. I see the presentation.

13 Q. And you remember testifying about it yesterday, correct?

14 A. I did, yes.

15 Q. And this was a presentation made by your colleague in 2019;
16 isn't that right?

17 A. It is.

18 Q. And what the government showed you was a two-page excerpt
19 from that presentation, right?

20 A. They did, yes.

21 Q. Just this page, which is the cover page, correct? And then
22 a second page, which you can show the jury -- I'm sorry, that
23 was not -- why don't you take that second page down. You
24 recall this document, correct?

25 A. I recall the document, yes.

L3HPWEI1

Elliott - Cross

1 Q. Okay. Now, I'd like to show you, just for the witness,
2 Akhavan Exhibit 5014.

3 A. Okay. I'm there.

4 Q. And do you see the title of this document?

5 A. I do, yes.

6 (Continued on next page)

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L3HAWEI2ps

Elliott - Cross

1 Q. Do you see the person who is the author or presenter of the
2 document?

3 A. That I see, yes.

4 Q. Do you recognize the document?

5 A. I do, yes.

6 Q. Do you know what -- can you tell us what it is?

7 A. This is a document that -- it's a PowerPoint presentation
8 that I gave to one of our risk executive committee meetings.
9 At the top it's one of the marijuana laws and fact that they're
10 evolving and changing.

11 Q. And this was presented to Visa internally, correct?

12 A. It was present -- it was presented to internal Visa people
13 and clients that are members of our risk executive council that
14 we meet with to discuss merchant issues.

15 Q. And clients would include issuing banks, right?

16 A. Issuing and acquiring banks.

17 Q. And this presentation occurred in 2019, did it not?

18 If you turn to the second page and you look at the
19 bottom, I think it will help you understand -- or right
20 underneath. Do you see that?

21 A. Yes. 2018 or 2019, somewhere in that time period.

22 MR. BURCK: Your Honor, we offer Akhavan Exhibit 5014.

23 MS. DEININGER: Objection, Rule 403 and government
24 motion in limine 2.

25 THE COURT: Do you want to give me a hint what motion

L3HAWEI2ps

Elliott - Cross

1 in limine no. 2 is?

2 Here it is.

3 MR. BURCK: Your Honor, with respect to -- I think
4 no. 2 is talking to legislation. I am not going to elicit
5 anything about legislation from this document.

6 MS. DEININGER: It is in the document, though.

7 MR. BURCK: Your Honor, we could also redact it before
8 it goes to the jury.

9 THE COURT: As so redacted, it will be received.

10 (Defendant's Exhibit 403 received in evidence)

11 MR. BURCK: Thank you, your Honor.

12 Can you show the witness Akhavan Exhibit 5014.

13 Q. Now, sir, this is titled "Cannabis and Hemp Products,"
14 correct?

15 A. It is.

16 Q. That's the same title as the document that Elizabeth
17 Scofield provided -- or presented that you looked at for
18 Government Exhibit 2204, correct?

19 A. I don't know if it's the same title. I'd have to go back
20 and look at it.

21 Q. Why don't you take a quick look.

22 A. I'm just doing that right now.

23 Q. Sure.

24 A. Yeah. It's the same title, yes.

25 Q. So fair to say the same topic, right?

L3HAWEI2ps

Elliott - Cross

1 A. Yes, similar topic.

2 Q. OK. Now, you testified that this happened in 2018 or 2019,
3 right?

4 A. It did.

5 Q. And you testified that there were issuing banks and
6 acquiring banks present, right?

7 A. I did.

8 Q. And also Visa executives, right?

9 A. Yes.

10 Q. All right. Let's turn to the second page. And the second
11 page, fair to say it's about the terms that you're going to be
12 using, which are cannabis, marijuana, THC and CBD, industrial
13 hemp. Right?

14 A. Yes.

15 Q. And the next slide, about global legalization --

16 MS. DEININGER: Objection.

17 MR. BURCK: Sorry. We'll skip that slide. Sorry.
18 We'll skip that slide. Sorry, your Honor. I had missed one
19 part of it.

20 Go to the third slide, please.

21 MS. DEININGER: Objection. Motion in limine 2.

22 MR. BURCK: Your Honor, I'm looking at the slide that
23 says "Legal Landscape of Marijuana in the U.S."

24 THE COURT: Does somebody have a hard copy of this, so
25 I can see the whole exhibit?

L3HAWEI2ps

Elliott - Cross

1 MR. BURCK: Your Honor, I think they have elicited
2 this from their witnesses, this very fact.

3 MS. DEININGER: We have not.

4 MR. BURCK: OK. Your Honor, I can skip that slide
5 too. I don't want to waste the jury's time.

6 THE COURT: All right. Skip that slide.

7 MR. BURCK: Let's go to the next one.

8 Q. Marijuana --

9 MS. DEININGER: Objection, same objection.

10 THE COURT: Now, see, what I didn't have before me
11 when this was offered was the whole -- let me see without
12 showing the jury --

13 MR. GIBERT: We can't hear you, Judge.

14 THE COURT: I'm sorry. When I made a ruling a minute
15 ago I didn't have before me the full document, and now I'm
16 reconsidering. Let me see, without showing it to the jury, all
17 the slides you want to show to this witness.

18 MR. BURCK: Yes, your Honor. It's the cover slide.
19 It's the second slide. Give me that a little smaller so the
20 witness -- the judge can see.

21 The second slide. And then you skip the third slide,
22 your Honor. Skipping that one.

23 The fourth slide the government has objected to. We
24 would offer -- I think it was offered in evidence, but we could
25 also skip that if it's easier.

L3HAWEI2ps

Elliott - Cross

1 THE COURT: What else do --

2 MR. BURCK: I'm sorry, I couldn't hear?

3 THE COURT: I want to see everything.

4 MR. BURCK: Sorry, your Honor. And then the next
5 slide, that slide, your Honor, is the one we really want to
6 talk about. And then that's it, your Honor.

7 THE COURT: And is the government objecting to all
8 this?

9 MS. DEININGER: We do not object to the cover or
10 slide 2, but we are objecting to the last two slides that were
11 shown as irrelevant.

12 THE COURT: Sustained.

13 BY MR. BURCK:

14 Q. Mr. Elliott, do you recall -- you recall this presentation,
15 correct?

16 A. I do, yes.

17 Q. And the purpose of the presentation was what, your Honor --
18 Mr. Elliott?

19 A. The purpose of the presentation was to educate a group of
20 stakeholders on the requirement that we're shifting in the U.S.
21 marketplace and there has been some states pushing for
22 legalization, there has been some conjecture in Congress about
23 legalization --

24 MS. DEININGER: Objection. Move to strike.

25 THE COURT: Yes. So the answer will stand through

L3HAWEI2ps

Elliott - Cross

1 the -- the following portion of the answer will stand: "The
2 purpose of the presentation was to educate a group of
3 stakeholders on the requirement that we're shifting in the U.S.
4 marketplace and there have been some states pushing for
5 legalization," period. The rest will be stricken.

6 Put another question.

7 MR. BURCK: Your Honor, I'll move on from this
8 document.

9 BY MR. BURCK:

10 Q. You testified yesterday about the Global Brand Protection
11 Program. Do you recall that, Mr. Elliott?

12 A. I did.

13 Q. And you testified that it helps ID problematic merchants,
14 right?

15 A. Yes.

16 Q. Now, it does that after the transaction has occurred.
17 Right?

18 A. Not always.

19 Q. So sometimes the program stopped the transaction from
20 occurring, in a nanosecond?

21 A. No. What I'm referring to there was an educational
22 component about the program, and so as acquirers understand
23 what their obligations are and what areas we focus on, they may
24 not find certain problematic merchants to begin with, and that
25 way it prevents the transactions coming in.

L3HAWEI2ps

Elliott - Cross

1 Q. OK. But when you talk about specifically identifying a
2 problematic merchant, that happens after the transaction has
3 occurred, correct?

4 A. Well, what I was talking to you then about was the testing
5 process or the identification process. And so, yes, once we do
6 a test transaction, we then can identify who that merchant is.

7 Q. OK. So the testing process that you talked about occurs
8 only after the transaction has occurred. Correct?

9 A. Well, it occurs during it, actually.

10 Q. Sir, I'm not talking about the testing transaction itself.
11 I'm talking about the transaction that leads to the text.
12 Right? You understand that?

13 A. Well, I think I -- the way I think of it is that the test
14 is the transaction.

15 Q. OK. So when you -- so how do you -- you testified
16 yesterday that testing occurs after you are notified of a
17 potentially problematic merchant, right?

18 A. I did in the reactive mode, yes.

19 Q. And then that testing leads to this transaction you're
20 talking about, right?

21 A. The testing leads to the identification of the merchant
22 name descriptor in the system and then ultimately the acquiring
23 bank to the merchant connected to it.

24 Q. Let me show you Government Exhibit 2226. Let me find that
25 document.

L3HAWEI2ps

Elliott - Cross

1 A. I got it.

2 Q. Do you recall that you testified this was about a Texas
3 bank that had been problematic relating to potential marijuana
4 sales? Right?

5 A. Yes.

6 Q. Now, this had nothing to do with Eaze, correct?

7 A. This identification was unique to a Texas bank and
8 merchants they had, so -- so yes.

9 Q. Nothing to do with Eaze, yes?

10 A. Well, let me say this. I don't know whether it had
11 anything to do with Eaze or not. But this identification was
12 unique to the Texas bank that was an acquirer of this specific
13 group. I don't know if Eaze was connected to it or not.

14 Q. You testified yesterday about the testing process you would
15 use, right? Remember that?

16 A. Yes.

17 Q. And you testified that Visa does not have a systematic
18 program to detect marijuana sales on its platform. Right?

19 A. I testified that we're not proactively, as a matter of
20 course, proactively testing marijuana sites.

21 Q. And you're not routinely checking for marijuana either. Is
22 that what you said?

23 A. Well, I wouldn't say "routinely" is the right word. It's a
24 matter of, you know, business as usual. If we get tips or we
25 come across something that shows that an illegal marijuana

L3HAWEI2ps

Elliott - Cross

1 transaction is coming in, we'll action it like we would any
2 illegal transaction that we're made aware of.

3 Q. Right. But you did not proactively search for marijuana,
4 right?

5 A. We're not proactively -- it's not part of our -- our stated
6 testing regimen to our vendor.

7 Q. You testified that illegal gambling and illegal
8 pharmaceuticals were much more important to you, right?

9 A. Those are considered high-priority items.

10 Q. Thank you.

11 Now, turning to Eaze, you testified --

12 MR. BURCK: You can take that down, Mr. McLeod.

13 Q. You testified that Eaze, the Eaze inquiry came from a tip,
14 right?

15 A. It did.

16 Q. And the tip was based on a news story that someone at Visa
17 had seen about Eaze possibly using Visa. Right?

18 A. It was, yes.

19 Q. And you conducted a test transaction based on that tip,
20 right?

21 A. Visa did, yes.

22 Q. Visa, your team did.

23 A. Yes. Our team did.

24 Q. And you testified that they went to the website, right?

25 A. Yes. We -- our vendor --

L3HAWEI2ps

Elliott - Cross

1 Q. Yes or no, Mr. Elliott? I'm sorry. Yes or no. I'm just
2 conscious of the time.

3 A. Restate it?

4 Q. These teams would go to the website of Eaze? Yes or no.

5 I'll help you. Why don't you look at --

6 A. My vendor went to the test site and conducted the test
7 transaction.

8 Q. Your vendor who works for Visa, correct?

9 A. Yes.

10 MR. BURCK: Can we show the witness Government Exhibit
11 2231 and 2232, which are in evidence.

12 Q. OK. You recall testifying about this, right?

13 A. Well, I have to get them.

14 Q. Sorry. I'm sorry.

15 A. 2230 -- I think you said --

16 Q. 2231 and 2232.

17 A. OK. I'm at 2231. Yes, I testified about that.

18 Q. And then 2232.

19 A. Yes. I see that. I also testified about that. Yes.

20 Q. And on 2232, you testified that you can clearly see the URL
21 is eaze.com, right?

22 A. Yes.

23 Q. Now let's look at Government Exhibit 2227.

24 MR. BURCK: Your Honor, I'm conscious that I'm running
25 up on my 45 minutes. Could I beg the Court's indulgence?

L3HAWEI2ps

Elliott - Cross

1 Could I have a few more minutes after that?

2 THE COURT: OK. But I will give the government extra
3 time as well.

4 MR. BURCK: I'm sorry, your Honor. I couldn't hear
5 you.

6 THE COURT: I'm sorry. OK, but I will give the
7 government, then, extra time as well.

8 MR. BURCK: Thank you. That's fine. Thank you, your
9 Honor.

10 Q. So looking at Government Exhibit 2227, do you recall that
11 document?

12 A. I do, yes.

13 Q. And you testified that this shows a series of merchants
14 that were terminated as a result of the Eaze inquiry, right?

15 A. I did, yes.

16 Q. And all the merchants that were terminated used the
17 merchant URL eaze.com or eazewellness.com, right?

18 MR. BURCK: You can highlight that to the jury,
19 please, Mr. McLeod.

20 Q. You see that?

21 A. I do see it, yes.

22 Q. And you see next to the merchant URL "merchant name,"
23 correct?

24 A. I do, yes.

25 Q. And none of those merchants is Eaze, right?

L3HAWEI2ps

Elliott - Cross

1 I should say -- let me withdraw the question.

2 None of those merchants said Eaze. Right?

3 A. None of the merchant names on this document say Eaze, under
4 that column.

5 Q. But you understood, and your team understood, that Eaze was
6 behind all these merchants. Correct?

7 A. We understand that because the test transactions took place
8 at the Eaze website, and the names that came through the
9 payment system were the five different names in that merchant
10 name column.

11 Q. Are you familiar based on your knowledge and experience in
12 this field with the term "proxy"?

13 A. Excuse me?

14 Q. "Proxy," p-r-o-x-y, proxy.

15 A. I'm not familiar with the way you use that term, no.

16 Q. I didn't ask the way you use it. I just asked you if you
17 are familiar with the word "proxy."

18 A. I don't know what you mean by that.

19 Q. OK. Let's turn to Government Exhibit 2228. And can we
20 highlight, in the middle, and if you could find that document,
21 Mr. Elliott.

22 A. I found it, yes.

23 Q. And you see that -- you testified about this document as
24 well, right?

25 A. I believe so, yes.

L3HAWEI2ps

Elliott - Cross

1 Q. And on the far left do you see under "Merchant Name"
2 SonicLogistix, correct?

3 A. I see that, yes.

4 Q. And under "Merchant URL," you see eaze.com, correct?

5 A. I do, yes.

6 Q. So when we were looking at the prior exhibit, 2227,
7 right -- we'll go back to that -- the merchants that were
8 terminated were just SonicLogistix, advancedphotovoltaics,
9 advanced-electricity.com, and advanced-dynamic.com -- and also,
10 I'm sorry, BTPinternet-trans, right?

11 A. Those were the merchant names that were terminated, yes.

12 Q. Eaze was not terminated, right?

13 A. Our belief was -- and very typical --

14 Q. Sir, before you answer -- before you explain, my question
15 was, was Eaze terminated? Yes or no. Then I'll let you
16 explain.

17 A. My belief was that Eaze was being terminated because they
18 were using a name other than their own. And the purpose of the
19 test transaction was to conduct a test at the Eaze website.
20 But the Eaze name did not flow through the system. Another
21 name did. And the acquirer responsible for it indicated to us
22 that they have terminated it, which to us meant they terminated
23 Eaze. That's the explanation.

24 Q. So when you say that it meant to you that they had
25 terminated Eaze, did anybody tell you they terminated Eaze?

L3HAWEI2ps

Elliott - Cross

1 A. They wouldn't have told me, but they would have indicated
2 that fact to the program managers in the European region that
3 were administering this program.

4 Q. And they would have done that. Do you know if they did
5 that?

6 A. Well, I know that one of the documents I looked at from, I
7 want to say PXP Financial stated that.

8 Q. I'm not familiar with that document, sir. Do you know what
9 time you're referring to?

10 A. There was a document I looked at yesterday which was a
11 letter from one of the acquiring banks that stated, based on
12 the identifications, that the entity had been terminated.

13 Q. And the entity being Eaze?

14 A. The entity being the agent and the related merchants, yes.

15 Q. Does that --

16 A. I remember it from yesterday.

17 Q. Did it say the word "ease"?

18 A. I'd have to look at it again to do that. But that was an
19 indication that it was terminated, to us.

20 Q. So you're saying that your understanding was that Eaze was
21 terminated from the Visa system as of this inquiry in 2018 time
22 frame.

23 A. I believe it was 2019.

24 Q. 2019. I'm sorry. 2019.

25 A. And I'm looking at your exhibit that you put in front of

L3HAWEI2ps

Elliott - Cross

1 me, 2228, and it states the merchant termination date was
2 6/26/19.

3 Q. So just to be clear, your testimony is that as of that
4 date, you understand that Eaze had been terminated from the
5 Visa system, network.

6 A. That's my understanding. That's why --

7 THE COURT: Counsel, I do think now you're --

8 MR. BURCK: Your Honor, I've just got a few more.
9 Just a couple minutes just to wrap up questions.

10 THE COURT: I'll give you two minutes.

11 BY MR. BURCK:

12 Q. Are you familiar with a company called Circle?

13 A. I am, yes.

14 MS. DEININGER: Objection.

15 THE COURT: No, I'll allow that. Overruled.

16 Q. So you are familiar with a company called Circle, right?

17 A. Not, not intimately, but I know that it exists.

18 Q. And you are familiar that it provides what's called a
19 digital wallet, right?

20 MS. DEININGER: Objection.

21 THE COURT: Overruled.

22 A. I, I -- I'm not familiar with the product offering. I know
23 they're a participant in the payment system, but I have not
24 been personally involved with interactions with that entity.
25 So I don't have any direct knowledge as to how they operate.

L3HAWEI2ps

Elliott - Cross

1 Q. Understood. And you just testified that Eaze, as far as
2 you know, Eaze was terminated from the Visa network in 2019.
3 Correct?

4 A. I did, yes.

5 Q. So as far as you're aware, they are not operating in the
6 Visa network today, correct?

7 A. No, that's -- that's not true, because we recently got a
8 complaint from Bank of America about this particular entity,
9 Eaze, coming through Circle. And it's being investigated. But
10 I don't know how it's been determined.

11 Q. When did you get that inquiry, sir?

12 A. Oh, I would say it's probably a couple weeks ago.

13 Q. A couple weeks ago.

14 And then --

15 MR. BURCK: Your Honor, this is my last set of
16 questions.

17 THE COURT: I agree with that.

18 Q. Now, Visa has not asked any of the issuing banks to warn
19 cardholders not to engage in marijuana sales, right?

20 MS. DEININGER: Objection.

21 MR. BURCK: Your Honor, I can lay a foundation. I'm
22 just trying to get to the --

23 THE COURT: I'll allow it.

24 MR. BURCK: You'll allow it, your Honor? Thank you.

25 Q. So Visa has never asked -- or has not asked issuing banks

L3HAWEI2ps

Elliott - Cross

1 to warn its cardholders, stop using these cards for marijuana
2 sales. Right?

3 MR. BURCK: You're frozen.

4 Your Honor, I think the witness is frozen. Not
5 literally frozen, but the screen.

6 Your Honor, just to speed this along, your Honor, what
7 I could do, if I could have time in my -- I know there was
8 supposed to be no more cross, but just this last set of
9 questions, so we don't waste time with the jury.

10 A JUROR: He's back, he's back.

11 MR. BURCK: Oh, he's back. I'm sorry.

12 Q. Can you hear me now, Mr. Elliott?

13 A. I did, and I answered the question.

14 Q. We didn't hear it, so you're going to have to answer it
15 again. I'm sorry.

16 A. That's OK. Go ahead.

17 Q. So the question was, did Visa ask its issuing banks to warn
18 cardholders to stop using their cards for marijuana sales?

19 A. We did not make that specific warning to issuers or
20 requests.

21 Q. Did Visa ever threaten to penalize the issuing banks for
22 not preventing its cardholders from purchasing marijuana using
23 Visa-branded cards?

24 A. We did not.

25 THE COURT: All right. That concludes the cross.

L3HAWEI2ps

Elliott - Cross

1 Cross from counsel for Mr. Weigand.

2 CROSS-EXAMINATION

3 BY MR. HARID:

4 Q. Good morning, Mr. Elliott. Can you hear me?

5 A. I can, yes.

6 Q. Thanks for waking up this early. I appreciate it.

7 A. Sure.

8 Q. You testified yesterday about merchant category codes. Do
9 you remember that?

10 A. I do.

11 Q. And these are four-digit codes that classify merchants and
12 the industries they're in, right?

13 A. They're four-digit codes that identify the merchant
14 industry, yes.

15 Q. And do you recall testifying that they serve a risk
16 management function for acquirers? Right?

17 A. They do for both acquirers and issuers, yes.

18 Q. And you said that the international -- the Industry
19 Standards Organization sets industry codes, right?

20 A. I refer to them as ISO, but, yes, ultimately they approve
21 new codes, and they're the body that blesses the creation of
22 new codes, yes.

23 Q. And those codes essentially become, or are, the MCCs.

24 A. They are, yes.

25 MR. HARID: I'd like to show the witness Akhavan

L3HAWEI2ps

Elliott - Cross

1 Exhibit 5047.

2 Q. Have you seen this document before?

3 A. One moment.

4 No.

5 Q. But you see it says --

6 A. No.

7 Q. What does it say at the top?

8 MS. DEININGER: Objection, not in evidence.

9 Q. It appears to say Visa --

10 MS. DEININGER: Objection.

11 THE COURT: Yes. It's not in evidence. You can't --

12 MR. HARID: Well, I'd like to offer the document into
13 evidence.

14 MS. DEININGER: Objection.

15 THE COURT: Sustained.

16 MR. HARID: No objections, or are we --

17 THE COURT: No. The objection was sustained.

18 MR. HARID: I'm sorry. I couldn't hear you. Couldn't
19 hear you.

20 BY MR. HARID:

21 Q. Mr. Elliott, is it true that Visa is on various ISO
22 subcommittees?

23 A. I don't know what -- how many ISO subcommittees Visa is on.
24 I'm not an expert.

25 Q. But it's on at least some of them.

L3HAWEI2ps

Elliott - Cross

1 A. I don't know.

2 Q. Do you know if it's on the technical committee?

3 MS. DEININGER: Objection.

4 THE COURT: Sustained.

5 Q. Visa has the ability to give ISO input, correct?

6 MS. DEININGER: Objection, foundation.

7 THE COURT: I'm not seeing the relevance of any of
8 this. Sustained.

9 Q. Let me put it this way. Mr. Elliott, to your knowledge,
10 does Visa have the ability to create -- to influence the
11 creation and definition of merchant category codes?

12 MS. DEININGER: Objection.

13 THE COURT: OK. Now I do understand. I will allow
14 that.

15 Q. You can go ahead, Mr. Elliott.

16 A. And can -- sorry. Just restate it one more time?

17 Apologies.

18 Q. The question was, to your knowledge, does Visa have the
19 ability to influence the creation of merchant category codes?

20 A. It does, yes.

21 Q. I'd like to return to the Global Protection Program guide
22 that you reviewed with Ms. Deininger and Mr. Burck, which is
23 Government Exhibit 2203, Section 4.4, on page 14. This is the
24 section on illegal or miscoded gambling transactions, right?

25 A. I have it now. Yes.

L3HAWEI2ps

Elliott - Cross

1 MR. HARID: Mr. McLeod, can you close that out,
2 please.

3 Q. Mr. Elliott, do you see the section that identifies MCC
4 7995?

5 A. I'm looking at the table?

6 Q. Correct. Correct, yes.

7 A. Yes, I do see that.

8 Q. 7995 is a mandatory MCC for online gambling. Right?

9 A. It is.

10 Q. And that code is blocked by U.S. issuers, right?

11 MS. DEININGER: Objection, foundation.

12 Q. U.S. issuing banks?

13 THE COURT: Sustained. Lay a foundation.

14 Q. Do you know what approach issuing banks in the United
15 States take to that specific MCC code?

16 A. I do.

17 Q. And what is that approach?

18 A. The majority of the U.S. issuers will block offshore online
19 gambling transactions.

20 MR. HARID: You can close out of that, Mr. McLeod.

21 Same document, please, same section.

22 Q. At the bottom of the page, do you see the paragraph
23 beginning "in December 2014," and then "intrastate gambling"?

24 A. I'm looking at the -- I'm on page 14. It says "United
25 States Only"? Is that what you're --

L3HAWEI2ps

Elliott - Cross

1 Q. Correct. Can you read that paragraph, please, for the
2 jury.

3 A. Yes. "In December 2014, three new MCCs (7800, 7801, 7802)
4 were introduced in the U.S. for legal gambling transactions.
5 The new MCCs were implemented to help issuers capture volume
6 from recently legalized intrastate gambling."

7 Q. So what that means is that those three MCCs were introduced
8 into the system by Visa in December 2014, right?

9 MS. DEININGER: Objection, misleading.

10 THE COURT: Slightly misleading. Why don't you
11 rephrase.

12 Q. Mr. Elliott, based on what you see here, do you agree that
13 Visa and ISO introduced those three new MCCs -- 7800, 7801, and
14 7802 -- in December of 2014?

15 A. We did.

16 Q. And those three MCCs correspond to very specific
17 activities, right?

18 A. Are --

19 Q. Let me just direct you to the following page. Do you see
20 the table that identifies what each MCC is associated with?

21 A. I do.

22 Q. And so MCC 7800 codes government-owned lotteries, right?

23 A. It does.

24 Q. And 7801 is the applicable code for government-licensed
25 casinos, right?

L3HAWEI2ps

Elliott - Cross

1 A. It is.

2 Q. And 7802 is the applicable code for government-licensed
3 horse and dock racing, right?

4 A. It is.

5 Q. I'd like to just get a better understanding of how MCC 7995
6 works, if I may. Assuming I'm a U.S. cardholder and the
7 merchant, gambling merchant, is based in Europe, and the
8 issuing bank is based in Europe, that code would be -- that
9 transaction would be coded 7995. Right? Online gambling?

10 A. It should be if the cardholder in the -- pardon me. I
11 think I heard you say if a cardholder and a merchant were in
12 Europe, they would both be in 7995. And that's generally true.

13 Q. Assuming the cardholder was in the U.S., would it still be
14 7995?

15 A. Oh, wait. I -- I'm getting confused. Back up. I'm sorry.
16 Can you describe where the merchant and the acquirer are one
17 more time?

18 Q. The cardholder is in the U.S. The merchant is in Europe.
19 It's a Europe-licensed online gambling merchant. And the
20 issuing bank is in Europe. Right. That transaction would be
21 coded 7995?

22 A. It -- well, let's just say this. If the merchant is a
23 gambling merchant and it's based in Europe, then it should be
24 in 7995.

25 Q. Right. And if the issuing bank was a European issuing

L3HAWEI2ps

Elliott - Cross

1 bank, that transaction would go through, right?

2 MS. DEININGER: Objection, foundation.

3 THE COURT: Sustained.

4 Q. Mr. Elliott, you recall testifying moments ago that the
5 code 7995 is blocked by U.S. issuing banks, right? By most
6 U.S. issuing banks.

7 A. It is.

8 Q. Do you also recall --

9 A. If I may --

10 Q. There is no pending question. I think minimum time is
11 limited?

12 A. I think -- I do need to clarify, sir. There's a --

13 THE COURT: We'll give you a brief moment to clarify.
14 Go ahead.

15 THE WITNESS: What I want to say, to give a complete
16 answer, is that when it's a card-not-present transaction in
17 7995, the U.S. issuers generally block all of those because it
18 would appear that they're offshore illegal transactions. 7995
19 card-present transactions where the cardholder is physically
20 present in, say, Las Vegas or New Jersey, those largely get
21 approved because they know there's no risk of possible
22 illegality.

23 THE COURT: All right. Put another question.

24 BY MR. HARID:

25 Q. Mr. Elliott, do you recall testifying yesterday that there

L3HAWEI2ps

Elliott - Cross

1 is no MCC code for illegal industries or illegal products?

2 A. I do.

3 Q. We just established that there is a specific code for
4 illegal online gambling, which is 7995?

5 MS. DEININGER: Objection, misleading.

6 THE COURT: Well, it's, as phrased, it's not a
7 question, it's a statement. So the objection is sustained on
8 that ground.

9 Q. Mr. Elliott, do you agree that there is a specific
10 mandatory code for illegal online gambling?

11 MS. DEININGER: Objection.

12 THE COURT: Overruled.

13 A. Can I answer that?

14 Q. You can go ahead, yes.

15 A. No, I don't agree that there is an MCC for illegal online
16 gambling. And it gets back to the point I made earlier. Our
17 rules say the transactions must be legal in buyer and seller's
18 jurisdiction. And in fact online gambling is absolutely legal
19 in many jurisdictions around the world, including Europe. So
20 it's very normal and acceptable for online gambling in Europe
21 and other countries to be in 7995.

22 So 7995 has never been for illegal transactions. It's
23 for legal transactions.

24 THE COURT: Mr. Elliott, Mr. Elliott, I think you've
25 answered the question.

L3HAWEI2ps

Elliott - Cross

1 Go ahead.

2 BY MR. HARID:

3 Q. You told Mr. Burck earlier that, you said you were familiar
4 somewhat with Circle. Is that correct?

5 A. Yes. I had a slight knowledge of it.

6 Q. And you're aware of their digital wallet?

7 A. I'm not fully aware of their business model or how they
8 operate.

9 Q. I'd like to turn to Government Exhibit 2207, which was the
10 Visa data standards manual. Mr. Elliott, are you familiar with
11 this document?

12 MS. DEININGER: Objection. It isn't in evidence.

13 MR. HARID: I will offer it.

14 Q. Mr. Elliott, are you familiar with this document?

15 You can go ahead.

16 A. I didn't hear the judge's response.

17 THE COURT: Well, the last thing I heard was that
18 defense counsel offered the document, but I haven't heard any
19 response from the government.

20 MS. DEININGER: No objection.

21 THE COURT: Received.

22

23 (Defendant's Exhibit 2207 received in evidence)

24 MR. HARID: I'd like to offer Government Exhibit 2207
25 into evidence.

L3HAWEI2ps

Elliott - Cross

1 Can we please turn to page 79. 79. Can we please
2 blow up the section that says 6540, nonfinancial
3 institutions -- stored value purchase card.

4 Q. Mr. Elliott, can you please read the paragraph beginning
5 "this MCC."

6 A. Sure. One moment.

7 "Nonfinancial institutions -- stored value card
8 purchase/load."

9 It reads, "This MCC must be used for the initial
10 purchase and/or any subsequent reloads of stored value cards
11 (including Visa prepaid cards) occurring at nonfinancial
12 institutions. This MCC is not applicable for use with staged
13 digital wallet operators."

14 Q. I'd like to turn to the Visa rules. That's Government
15 Exhibit 2208, which you reviewed yesterday. If we could turn
16 to page 338 of the PDF, table 5-1.

17 Mr. Elliott, have you seen this table before?

18 A. I'm not there yet. You said 2208?

19 Q. Correct, yes.

20 A. That's 2202. One moment, please.

21 OK. I'm looking at the Visa core rules of Visa
22 product and service rules?

23 Q. That's right.

24 A. Is that it?

25 Q. That's right.

L3HAWEI2ps

Elliott - Cross

1 A. OK.

2 Q. Page 338.

3 A. 338. Sorry. One minute.

4 I'm looking at something that says "Table 5-1."

5 Q. Yes. That's right. That's right.

6 Do you see the column that says "MCC"?

7 A. I do, yes.

8 Q. And you see the column that says "Use"?

9 A. I do, yes.

10 Q. And can you read what's below "Use."

11 A. "Funding the wallet before the cardholder makes the
12 purchase."

13 Q. What this appears to show, Mr. Elliott, is that there are
14 applicable MCC codes for staged digital wallet transactions,
15 right?

16 MS. DEININGER: Objection. He's testifying.

17 MR. HARID: A leading question, your Honor.

18 THE COURT: Well, putting aside that I don't really
19 understand either the objection or counsel's response to the
20 objection, the objection is overruled.

21 Q. You can go ahead, Mr. Elliott.

22 A. Do you want to repeat it?

23 Q. Based on your review of this table, do you agree that there
24 appear to be prescribed MCCs for staged digital wallet
25 transactions?

L3HAWEI2ps

Elliott - Cross

1 A. So the MCC column gives instructions on merchant category
2 codes to be used under three circumstances: for account
3 funding, there is MCC 6051; if the funds will be cued for a
4 high-brand risk transaction, then the applicable high-brand
5 risk MCC; and then if the funds are used for a gambling
6 transaction. So there are three different indicators.

7 Q. So in the case of a staged wallet transaction, the
8 applicable MCC would either be 6051 or the applicable
9 high-brand risk MCC. Right? Or the applicable gambling MCC.
10 Right?

11 A. Generally speaking, it should be. However, I would say
12 this. The whole notion of staged digital wallets and that
13 business model is new. And without knowing the use case of the
14 specific merchant, how they operate, what they do, whether it's
15 truly a staged digital wallet or not, I really couldn't tell
16 you much further -- what specific MCC should be used.

17 Q. You would agree that Circle, at least to your knowledge, is
18 a staged digital wallet?

19 MS. DEININGER: Objection.

20 THE COURT: Sustained. I think you need to move on.
21 He has already indicated that he has only modest information on
22 this.

23 MR. HARID: Sorry, your Honor?

24 THE COURT: I think you need to move on. He's
25 already -- he's already indicated he has only minimal knowledge

L3HAWEI2ps

Elliott - Cross

1 in this area.

2 MR. HARID: I understand. Thank you.

3 BY MR. HARID:

4 Q. Mr. Elliott, you told Mr. Burck that the word "marijuana"
5 doesn't appear anywhere in the Global Brand Protection Program
6 guide, yes?

7 A. I believe I said we didn't specifically refer to cannabis
8 in a specific section.

9 Q. Or anywhere in the GPB Program guide.

10 A. To the best of my knowledge --

11 Q. It's yes or no.

12 A. I thought I heard somebody objecting. I'm sorry. To the
13 best of my knowledge, I don't know it is in there. No, I don't
14 think we put that specific word in there.

15 Q. And what you told Mr. Burck was that it's not the primary
16 focus of the program. Right?

17 A. It's not -- what I told him is, we used a risk-based
18 approach and it's not one of the high-priority segments at this
19 time.

20 Q. Yesterday, when you discussed proactive testing and test
21 transactions, you testified that Visa uses vendors to smoke out
22 illegal transactions, right?

23 A. Yes. I did testify that we use vendors to conduct test
24 transactions of various entities.

25 Q. And you said it was a risk-based approach to testing.

L3HAWEI2ps

Elliott - Cross

1 A. I did, yes.

2 Q. And you said the entities that are tested are the ones that
3 present the most significant threat to the payment system.

4 A. I did say that, yes.

5 Q. And you testified both yesterday and today that Visa does
6 not proactively test marijuana websites. Right?

7 A. They're not one of our proactive segments at this point.

8 Q. So based on the omission of marijuana in the GBP guide and
9 based on the lack of proactive testing that Visa does for
10 marijuana, would it be fair to say that marijuana is not a
11 significant threat to the payment system?

12 A. No, I wouldn't go that far. We have a catchall phase. We
13 don't allow anything illegal. And so the last sentence in our
14 guide, the guide that you questioned me on or your fellow
15 lawyer questioned me on, we had a catchall phrase to basically
16 say anything else that's illegal. And so given our limited
17 resources, we do go after the greatest risk --

18 Q. Mister -- I think that's enough.

19 A. -- to not have any illegal activity in the system.

20 THE COURT: Counsel, how much more do you have?

21 MR. HARID: About a minute.

22 Can you show the witness Government Exhibit 2228.

23 Second page, please.

24 Q. Can you see the name under "Acquirer Name"?

25 A. I just want to make sure we're looking on the same page,

L3HAWEI2ps

Elliott - Cross

1 sir. Is this the GBPP detail?

2 Q. No. Government Exhibit 2228.

3 A. I'm looking at -- it says Government Exhibit 2228. It says
4 "GBPP details brand-protection identification management." I
5 understand. Is that correct?

6 Q. Yes. Right.

7 A. OK. I got it.

8 Q. And what's the name under Acquirer Name?

9 A. Let me find it. One moment.

10 Q. Under "Acquirer Information"?

11 A. That's on page 2, the name is Emerchantpay Limited.

12 Q. Right.

13 MR. HARID: And, Mr. McLeod, if you could close out of
14 that, please.

15 Q. The section under NCA Information. What does it say under
16 Regional Recommendation?

17 A. It says "Waive."

18 Q. And under "waived amount"?

19 A. 25,000.

20 Q. Does that mean the fine was -- the recommended amount was
21 not paid?

22 A. What that indicates is that Visa did not assess the
23 acquirer a \$25,000 noncompliance assessment.

24 MR. HARID: Thank you. No more questions.

25 THE COURT: Redirect.

L3HAWEI2ps

Elliott - Redirect

1 REDIRECT EXAMINATION

2 BY MS. DEININGER:

3 Q. Good morning, Mr. Martin.

4 A. Good morning.

5 Q. I'd like to start by drawing your attention to Government
6 Exhibit 2227. Do you have that in front of you?

7 MS. DEININGER: And Mr. Levine, that's in evidence.
8 If you can pull it up for everyone to look at.

9 A. I do have it.

10 Q. OK. So this is the cable of the merchants that related to
11 either eaze.com or eazewellness.com that were terminated as a
12 result of a Visa inquiry. Right?

13 A. It is.

14 Q. So focusing just on the merchant name, do any of those
15 contain the word "ease" in them?

16 A. No.

17 Q. Generally in your experience, is blocking a particular
18 merchant name, is that an effective way of keeping a merchant
19 from conducting illegal business in the Visa system?

20 A. No.

21 Q. Why not?

22 A. Because the merchant name field can be manipulated
23 actively. And it's not a viable way of keeping a problematic
24 entity out of the system.

25 Q. Can merchants change their name?

L3HAWEI2ps

Elliott - Redirect

1 A. They can, yes.

2 Q. And now looking at the merchant URL column, there are two
3 URLs there, eaze.com and eazewellness.com. Do you see that?

4 A. I do, yes.

5 Q. Are merchant URLs submitted to Visa as part of transaction
6 information?

7 A. To my knowledge, no.

8 Q. Does Visa have the ability to put in place a block for a
9 merchant URL?

10 A. No.

11 Q. And would it be effective for Visa to put in a general
12 block for all merchants containing the word "ease"?

13 MR. BURCK: Objection, your Honor.

14 THE COURT: Overruled.

15 Q. You can answer, Mr. Elliott.

16 A. Can you just restate it one more time? Sorry.

17 Q. I'll restate. Would there be any issues if Visa attempted
18 to put in place a block that just blocked all merchants with
19 the word "ease" in their name?

20 A. It would be impractical and not possible.

21 Q. And in particular why would it be impractical?

22 A. Well, because the way the name descriptor in the
23 transaction information flows, it would have to presuppose that
24 we would know every instance that an acquirer would be using
25 the name Eaze, and what I mean by that is, every acquirer --

L3HAWEI2ps

Elliott - Redirect

1 and this is where it gets confusing -- has an individual bank
2 identification number. Every one of those would have to be
3 blocked. And on top of it, we would have to know that that was
4 the actual entity that we intended to block and not somebody
5 else that had a similar name.

6 Q. And could it end up potentially blocking legitimate
7 merchants?

8 A. It could, but, you know, keep in mind I think it's very
9 important to understand that Visa does not sign these
10 merchants. And so there are hundreds of acquiring banks around
11 the world that sign merchants, and so the block or stop should
12 start with those acquirers, not at the Visa network.

13 Q. OK. So looking back at the Exhibit 2227, I think you
14 testified that to the best of your understanding, after these
15 merchants were terminated, Visa had no knowledge of Eaze
16 transacting through the system. Is that right?

17 A. We did not, no.

18 Q. And does this list all of the merchant names that Visa
19 identified as being associated with eaze.com in 2019?

20 A. These are the names that we were aware of in 2019 through
21 our program, yes.

22 Q. And these were all terminated, correct?

23 A. To the best of our knowledge, they were terminated, and
24 that was what was communicated to us by the acquirer.

25 Q. And you also said that recently you became aware of --

L3HAWEI2ps

Elliott - Redirect

1 because of a referral from Bank of America, that Eaze may be
2 transacting through the network. Is that correct?

3 A. That is.

4 Q. And after you got that referral, what steps has Visa taken?

5 A. Visa is in the process of investigating that now with the
6 acquiring bank in the region where it's occurred.

7 Q. And if it's determined that those are illegal marijuana
8 transactions that are being processed through these networks,
9 what steps will Visa take?

10 A. Well, we would go through and apply the traditional Global
11 Brand Protection Program process and expect that Eaze be
12 terminated.

13 Q. All right. Switching to a different topic for a minute,
14 you looked at some issues briefs regarding Visa's marijuana
15 position. Do you recall that?

16 I just want to ask you generally that. I don't want
17 to pull the document.

18 A. I do, yes.

19 Q. And those were internal documents, but they had a key
20 statement, right?

21 A. They did, yes.

22 Q. And that statement, that was intended to be a response to
23 any public inquiries regarding marijuana. Is that correct?

24 A. That was a public response to any media inquiries or also
25 when client banks had questions. That's our position.

L3HAWEI2ps

Elliott - Redirect

1 Q. So that's a public position Visa took, right?

2 A. Well, it's an internal memo, but it is intended to share
3 with our client banks so I guess would be public and any media
4 inquiries that we responded to. That's what we would say to
5 them, yes.

6 Q. And we also looked yesterday at a presentation Visa gave at
7 a Visa security summit. Do you recall that?

8 A. I do, yes.

9 Q. And that was the summit at which acquiring and issuing
10 banks were invited to attend. Do you remember that?

11 A. I do, yes.

12 Q. And so all of this, are these elements, are these part of
13 the Global Brand Protection Program's proactive component?

14 A. Are they part of the proactive component? Well, when I
15 talk about the proactive component, I'm talking about --

16 Q. Let me rephrase. I think you mentioned before that the
17 Global Brand Protection Program has a proactive educational
18 component?

19 A. It is part of the educational component, yes.

20 Q. And that educational component aims to make acquirers and
21 issuers aware of Visa's positions on its rules?

22 A. It is.

23 Q. And in coming up with its position regarding marijuana, did
24 Visa consider state laws legalizing marijuana?

25 A. We did, yes.

L3HAWEI2ps

Elliott - Redirect

1 Q. And did it generally consider guidance issued by the
2 federal government for banks related to marijuana?

3 A. We did, yes.

4 Q. And did it also consider the federal law prohibiting
5 marijuana sales?

6 A. We did, yes.

7 (Continued on next page)

L3HPWEI3

Elliott - Redirect

1 Q. And so Visa took all of that into account in coming up with
2 its position regarding marijuana transactions?

3 A. We did, yes.

4 Q. And just to be clear, Visa's position is that marijuana
5 transactions are prohibited because they are still illegal
6 under federal law; is that correct?

7 A. Our marijuana transactions are prohibited in U.S. based on
8 federal laws, yes.

9 Q. Are there any exceptions to that position?

10 A. Any exceptions? No, not in the U.S., no.

11 THE COURT: Counsel, how much more do you have?

12 MS. DEININGER: Permission to ask two more questions?

13 THE COURT: Okay.

14 Q. Mr. Elliott, you were asked on cross -- I think you were
15 asked -- you said that one of the central purposes of the
16 merchant name with descriptors is a cardholder reviewing their
17 transactions; is that right?

18 A. Yes.

19 Q. Is the merchant name and descriptor also utilized by
20 issuing banks and Visa after the fact, on the back end, when
21 conducting its risk mitigation analysis and investigations?

22 A. It is, yes.

23 Q. How so?

24 A. Well, it's very much the primary way of identifying the
25 entity responsible for those transactions.

L3HPWEI3

Elliott - Redirect

1 MS. DEININGER: Thank you. No further questions, your
2 Honor.

3 THE COURT: All right. Thank you very much.

4 Mr. Elliott, you are excused. Thank you very much.

5 (Witness excused)

6 Ladies and gentlemen, we'll give you your mid-morning
7 break at this time. I have another matter that I have to take
8 up telephonically; so it will probably be about 20 minutes.

9 (Jury not present)

10 THE COURT: Please be seated. Now, over the next 20
11 minutes, I want all cameras removed. The big screen that's in
12 front of the jury removed. The camera that's up on the wall
13 removed, everything turned off, nothing in front of anyone,
14 including me, and if that's not done in the next 20 minutes,
15 then you'll need to look and see whether your insurance covers
16 punitive damages.

17 MR. BURCK: Your Honor?

18 (Recess)

19 (In open court; jury not present)

20 THE COURT: Please be seated. There is something that
21 defense counsel wanted to raise?

22 MR. BURCK: Yes, your Honor. I'm sorry. Your Honor,
23 I just wanted to -- can you hear me okay, your Honor?

24 THE COURT: Yes.

25 MR. BURCK: I just wanted to re-raise it's Akhavan

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Elliott - Redirect

1 5014. And, Mr. McLeod, if you could just go to the slide
2 that's titled: Marijuana sales in the U.S. Thanks a lot.
3 There it is.

4 Your Honor, we offered this document into evidence
5 because the timing of the document was -- we thought, was very
6 relevant because it was in 2019. The witness had testified
7 about a colleague making a presentation about the same topic,
8 and this was the -- Martin Elliott was the guy actually giving
9 this presentation.

10 This slide, we thought, was very important because all
11 it's about -- it's not about legislation, it's not about
12 legalization, it's not about federal bills or anything. It's
13 literally about the size of the business of marijuana in the
14 United States, and the --

15 THE COURT: Why isn't it hearsay?

16 MR. BURCK: Well, your Honor, this goes purely to the
17 state of mind. This has nothing to do --

18 THE COURT: State of mind of this -- to be continued.

19 THE DEPUTY CLERK: Jury entering.

20 (Jury present)

21 THE COURT: Get the next witness or the previous
22 witness on the stand.

23 Please be seated.

24 I want to note for the record that juror No. 12 is a
25 close competitor of juror No. 5. All right. Go ahead,

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Cozzetto - Direct

1 counsel.

2 DARCY COZZETTO, (Resumed)

3 DIRECT EXAMINATION (RESUMED)

4 BY MS. DEININGER:

5 Q. Good morning, Ms. Cozzetto.

6 A. Good morning.

7 Q. You can hear me okay?

8 A. Yes. Thank you.

9 Q. Before we broke yesterday, you were testifying about a
10 meeting that you attended in March 2018 in Calabasas with Ray
11 Akhavan; do you recall that?

12 A. Yes.

13 Q. And you said there were several different topics discussed
14 in this meeting, one of which was high-risk credit card
15 processing; is that right?

16 A. Yes.

17 Q. And I think you were testifying about how Mr. Akhavan had
18 described the relative risk to different people in the room.
19 How for the dispensaries, there was close to zero, but for
20 himself, it was, I think you said, closer to ten, like an eight
21 or a nine; is that correct?

22 A. Yes.

23 Q. And what, again, was your understanding of what risk he was
24 referring to at that moment?

25 A. My understanding of the risk that he was referring to on

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Cozzetto - Direct

1 the scale off one to ten was the risk of getting caught.

2 Q. And so then I think you said the next topic that got
3 discussed at that meeting was generally kind of next steps and
4 a Q and A; is that right?

5 A. Yes.

6 Q. So what did Ray say during that meeting about next steps?

7 A. He had said that he needed one point of contact from Eaze
8 and the dispensaries if we decided to move forward, and then he
9 mentioned that kind of his contact would reach out to us. We
10 shouldn't be contacting them.

11 Q. And what was your -- was it decided who would -- the one
12 point of contact would be?

13 A. Yes.

14 Q. Who was that?

15 A. Jim decided that would be me.

16 Q. Did that happen at the time of the meeting?

17 A. I believe so, yes.

18 Q. And did Ray say anything to you about who would make
19 contact with you?

20 A. He mentioned that there was a gentleman who was, if I
21 recall correctly, the president of a German bank, and that this
22 gentleman had been terminally ill and had used cannabis as
23 medicine, and that that gentleman wanted to help Eaze. And it
24 was my understanding at that time that that gentleman would be
25 reaching out.

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Cozzetto - Direct

1 Q. And did Ray say anything about why that gentleman would be
2 reaching out? Would he be providing anything?

3 A. Yes. The gentleman would be providing credit card
4 processing applications to me to send to the dispensaries.

5 Q. And during that meeting, did Ray say anything about what
6 should be done with those applications?

7 A. He did, yes.

8 Q. What did he say?

9 A. He said to the dispensaries that they should fill
10 everything out, and be as honest as possible and as truthful as
11 possible in the application.

12 Q. And did he say why they should do that?

13 A. He said that they wouldn't know what happened to the
14 applications after, and if they were truthful, that they could
15 honestly say that they had submitted truthful information.

16 Q. And what was your understanding of why that was important?

17 A. My understanding was that the applications may have been
18 changed after they were submitted and possibly shown as not
19 being in the cannabis industry.

20 Q. And so why -- what benefit was there to the dispensaries in
21 making sure that they filled them out honestly? What was your
22 understanding of that?

23 A. My understanding was that the dispensaries would then
24 maintain a low level of risk, I guess, of getting caught.

25 Q. I think you testified yesterday that you do recall one of

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Cozzetto - Direct

1 Ray's associates being at the meeting; is that correct?

2 A. Yes.

3 Q. And I think you said that the next phase of the meeting was
4 kind of a milling, social phase; is that correct?

5 A. Yes.

6 Q. Did you meet one of Ray's associates during that phase of
7 the meeting?

8 A. Yes, I did.

9 Q. Do you remember his name?

10 A. No, I do not.

11 Q. Can you describe him?

12 A. I remember he was -- it was a man, and he was in his 30s or
13 40s, kind of a square-shaped head.

14 Q. Did you learn anything about his nationality?

15 A. I remember thinking he was German. I think he had an
16 accent that I placed as German, in my mind.

17 Q. Did Ray provide you with any contact information at that
18 meeting?

19 A. Yes. During the kind of closing, milling-about session,
20 Nick Fasano and I walked up to him and thanked him for his
21 time, and then Nick and Ray and I exchanged contact
22 information.

23 Q. And what contact information did Ray provide to you for
24 himself?

25 A. He provided his phone number, and we had asked for e-mail,

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Cozzetto - Direct

1 which he eventually provided as well.

2 Q. And what was the e-mail address he provided?

3 A. I don't remember the full e-mail, but I do remember it had
4 "jawbreaker" in it.

5 Q. And what, if anything, did Ray tell you about how he would
6 like to communicate with you going forward?

7 A. He asked to be communicated with via Telegram.

8 Q. Did he say why?

9 A. No, I don't believe he said why.

10 Q. So, Ms. Cozzetto, switching topics for a moment, I want to
11 ask you some questions about why you're here today. Are you
12 testifying pursuant to an immunity order?

13 A. Yes.

14 Q. And what is your understanding of the purpose of the
15 immunity order?

16 A. My understanding is that it's an order to come here and
17 share my version of the events.

18 Q. Does that mean that you've been ordered to testify here
19 yesterday and today?

20 A. Yes.

21 Q. And does the order protect you from what you say here today
22 being used against you?

23 A. That's my understanding, yes.

24 Q. Does the order provide you immunity from prosecution in
25 general?

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Cozzetto - Direct

1 A. No, it does not.

2 Q. So even with this immunity order, can you still be
3 prosecuted for the criminal activity you've been asked about
4 here today and yesterday?

5 A. My understanding is yes.

6 Q. Do you understand that you are under oath and required to
7 tell the truth?

8 A. Yes.

9 Q. Does the order protect you from being prosecuted for
10 perjury if you lie here today?

11 A. No, it does not.

12 Q. Okay. So going back to the Eaze credit card processing
13 scheme, what role did you play, if any, in Eaze's processing of
14 credit and debit card payments after the March 2018 meeting?

15 A. After the meeting, I was essentially a liaison between Eaze
16 and Ray to set up the EUP processing solution.

17 Q. Did you also work with the dispensaries?

18 A. Yes, I did work with the dispensaries.

19 Q. And what was -- in what role?

20 A. Also as a liaison between the dispensaries and Eaze and
21 Ray.

22 Q. And I think you mentioned you were also a liaison with,
23 among other parties, EUprocessing, right?

24 A. Yes.

25 Q. Who was your first point of contact at EUprocessing?

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Cozzetto - Direct

1 A. My first point of contact at EUpocessing was a gentleman
2 named Andreas.

3 Q. And how did you get in touch with him?

4 A. A few weeks after the meeting in Calabasas, I received an
5 e-mail from Andreas with the blank credit card processing
6 application.

7 Q. And I think you said that was an e-mail?

8 A. Yes.

9 Q. Do you remember what e-mail address it came from?

10 A. No, I do not.

11 Q. Do you remember, was it a ProtonMail e-mail address?

12 A. I believe so, yes.

13 Q. Did you ever meet Andreas in person?

14 A. No, I did not.

15 Q. Did you ever talk to Andreas on the phone?

16 A. No, I did not.

17 Q. Did you ever learn a last name for Andreas?

18 A. Not that I recall.

19 Q. So did you know who was actually writing e-mails that you
20 believed were from Andreas?

21 A. No.

22 Q. You received a number of e-mails from -- did you receive --
23 sorry.

24 Did you receive more than one e-mail from the e-mail
25 address that you believed to be related to Andreas?

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Cozzetto - Direct

1 A. Yes, I did.

2 Q. And were those e-mails always -- always signed as coming
3 from Andreas?

4 A. No, they weren't.

5 Q. Did that change over time?

6 A. Yes, it did.

7 Q. How so?

8 A. Eventually, the signature just became the initials EUP.

9 Q. Did Ray ever mention the name Ruben to you?

10 A. Yes, he did.

11 Q. What did he say about Ruben?

12 A. What I remember is, at the beginning, I think possibly even
13 at the meeting in Calabasas, he mentioned that Ruben would be
14 the main point of contact on his side.

15 Q. And then do you recall whether you were actually ever in
16 contact with Ruben?

17 A. What I remember is reaching out to someone named Ruben on
18 Telegram but not getting a response.

19 Q. Mr. Levine, can you show Ms. Cozzetto what has been marked
20 for identification as Government Exhibit 715.

21 Ms. Cozzetto, do you recognize this?

22 A. Yes.

23 Q. Is this an e-mail exchange that you participated in?

24 A. Yes.

25 MS. DEININGER: Your Honor, the government offers

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Cozzetto - Direct

1 Government Exhibit 715 into evidence.

2 MR. GILBERT: Previous objection noted.

3 MR. TAYBACK: Join.

4 THE COURT: Overruled.

5 (Government's Exhibit 715 received in evidence)

6 MS. DEININGER: So, Mr. Levine, if you can scroll down
7 to page 3 in this e-mail chain.

8 BY MS. DEININGER:

9 Q. And so looking -- Ms. Cozzetto, looking at this e-mail at
10 the bottom, on -- that was on May 16th, 2018; do you see that?

11 A. Yes.

12 Q. All right. Who does it say wrote this e-mail?

13 A. EUP.

14 Q. And what e-mail address are they using?

15 A. EUprocessing@ProtonMail.com.

16 Q. And when you read EUP before, were you looking down at the
17 bottom at the signature? How was this e-mail signed?

18 A. Yes, I'm looking at the bottom on the signature. "All my
19 best, EUP" is how it's signed.

20 Q. Okay. And so we can look to the e-mail now just above
21 that. It's also on May 16, 2018. Do you see that?

22 A. Yes.

23 Q. Is that an e-mail you wrote?

24 A. I'm sorry, can you ask that again?

25 Q. That's an e-mail you wrote?

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Cozzetto - Direct

1 A. Yes, it is.

2 Q. And what was the name of the person you believed you were
3 writing to?

4 A. Andreas.

5 Q. So looking just at the second paragraph now, it starts with
6 "Attached please find." Can you read the first two sentences
7 there?

8 A. "Attached please find the information that you requested.
9 I do not have the bank account information from Caliva, as they
10 are in the process of setting up a new account that has a name
11 not attached to cannabis."

12 Q. So looking at that second sentence, you say that "Caliva is
13 in the process of setting up a new account that has a name not
14 attached to cannabis." What was your understanding of why they
15 were doing that?

16 A. My understanding was that they needed a bank account not
17 attached to cannabis in order to receive the money from
18 processing credit cards.

19 Q. And why was that?

20 A. My understanding was that if the banks or the credit card
21 companies found out that Caliva was associated with cannabis,
22 that they would shut down the solution.

23 Q. Did anyone instruct you to have the dispensaries set up
24 bank accounts not connected to cannabis?

25 A. Yes.

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Cozzetto - Direct

1 Q. Who?

2 A. Ray.

3 Q. So now, if we can go up to the first page of this document.
4 There's a May 17, 2018, e-mail at 12:13 a.m. sent by the
5 EUprocessing@ProtonMail.com address; do you see that?

6 A. Yes.

7 Q. Can you read the body of that e-mail?

8 A. "Hey, all. For swift wires an address is, in many cases
9 needed. So it is important we don't use the physical address
10 of the dispensary but the address of the company that holds the
11 bank account line 'account name.' Best."

12 Q. And so what was your understanding of why it was important
13 that we don't use the physical address of the dispensary, but
14 use the address of the company that holds the bank account?

15 A. My understanding was in case someone at the banks or the
16 credit card -- the credit card companies Googled the address
17 and found a link to cannabis.

18 Q. And why would it be a problem if they found a link to
19 cannabis?

20 A. My understanding was because it was illegal to process
21 cannabis transactions.

22 Q. So now, let's go up to the very top of this e-mail
23 exchange. And just looking at this e-mail, this e-mail is sent
24 to you, right? Your name is on the "to" line?

25 A. Yes.

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Cozzetto - Direct

1 Q. And then also on the "to" line is someone named
2 Michele@spinwild e-mail address; is that correct?

3 A. Yes.

4 Q. The e-mailed is signed as being written by someone named
5 Patrick; is that right?

6 A. Yes.

7 Q. And that is a person using the e-mail Frenchyesq?

8 A. Yes.

9 Q. So we look at the "cc" line. It looks like this e-mail
10 also went to someone called GZman. What's your understanding
11 of who was using the e-mail GZman?

12 A. My understanding was that was Guy.

13 Q. And then it also looks like it went to jawbreaker 13. Who
14 did you understand to use the jaw breaker 13 e-mail address?

15 A. My understanding is that was Ray.

16 Q. So the last e-mail on this, in this header information, is
17 Andreas/EUprocessing, but can you look down and can you read
18 the greeting there?

19 A. "Hi Ruben."

20 Q. We can take this down, Mr. Levine. Mr. Levine, can you now
21 show just Ms. Cozzetto what's been marked as Government
22 Exhibit 458.

23 Ms. Cozzetto, do you recognize this?

24 A. Yes.

25 Q. And what is it?

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Cozzetto - Direct

1 A. This is an e-mail chain that I participated in
2 while working at Eaze.

3 MS. DEININGER: Your Honor, the government offers
4 Government Exhibit 458 into evidence.

5 MR. GILBERT: Previous objection noted.

6 MR. TAYBACK: Join.

7 THE COURT: Yes, it's overruled.

8 (Government's Exhibit 458 received in evidence)

9 MS. DEININGER: Mr. Levine, can you pull up for
10 everyone Government Exhibit 458 and Government Exhibit 715 next
11 to each other. And now on Government Exhibit 458, if we can go
12 to the e-mail that's at the bottom of the second page.

13 BY MS. DEININGER:

14 Q. Okay. Ms. Cozzetto, do you see the e-mail at the bottom
15 of -- Mr. Levine, if you cannot zoom in. If we can leave the
16 pages up.

17 Do you see the e-mail at the bottom of Government
18 Exhibit 458 and also the e-mail at the top of Government
19 Exhibit 715?

20 A. Yes.

21 Q. Are those the same?

22 A. Yes, I believe so.

23 Q. So is it fair to say that Government Exhibit 715 is a
24 continuation of that same e-mail exchange?

25 A. Yes, I think so.

L3HPWEI3

Cozzetto - Direct

1 Q. Okay. So now, let's just go -- sorry. It's Government
2 Exhibit 458 that's the continuation; is that right? It has the
3 response after the e-mail we just looked at?

4 A. Yes.

5 Q. So now, looking just at Government Exhibit 458, let's go
6 back up to the e-mail towards the bottom of the first page. It
7 was sent on May 17th at 9:12 a.m. by you; do you see that?

8 A. Yes.

9 Q. And who are you writing to?

10 A. I'm writing to Guy.

11 Q. Okay. And can you read the message you wrote?

12 A. "Thanks, Guy. Once the wires have been confirmed for
13 today, can you please let me know? I realize that the funds
14 won't hit for a few days, but it would be nice to let the
15 depots know when to be expecting the money. Thank you."

16 Q. Okay. If we can zoom out. I'd like to look at the
17 response just above that.

18 Can you read the greeting in the first two paragraphs
19 of the response?

20 A. "Hi, Darcy. Just wanted to keep you in the loop of all the
21 wires taking place. The second round of settlements to
22 merchants have cleared today. Ruben will be sent the wire
23 proofs later tomorrow."

24 Q. And did you respond to that?

25 A. Yes.

L3HPWEI3

Cozzetto - Direct

1 Q. What did you say?

2 A. "Thank you. I appreciate the update."

3 Q. Thank you.

4 Mr. Levine, I'm now going to turn to what's been
5 marked for identification as Government Exhibit 303.

6 Ms. Cozzetto, do you recognize this?

7 A. Yes.

8 Q. What is this?

9 A. This is a Telegram chat that I had with the dispensary
10 owners.

11 MS. DEININGER: Your Honor, the government offers
12 Government Exhibit 303 into evidence.

13 MR. GILBERT: No objection.

14 MR. TAYBACK: No objection.

15 THE COURT: Received.

16 (Government's Exhibit 303 received in evidence)

17 MS. DEININGER: Mr. Levine, can you publish Government
18 Exhibit 303 for everyone. Okay.

19 BY MS. DEININGER:

20 Q. Ms. Cozzetto, looking at this first page, about a couple of
21 lines from the top there's a name Craig Wald; do you see that?

22 A. Yes.

23 Q. Who is Craig Wald?

24 A. Craig Wald was a dispensary owner of Perennial dispensary.

25 Q. And then right below that there's Justin S. Who is Justin

L3HPWEI3

Cozzetto - Direct

1 S?

2 A. Justin S was the general manager of the Natoma dispensary.

3 Q. Further down the page, about a third of the way from the
4 bottom, there's a name Marty Schneider. Who is Marty
5 Schneider?

6 A. Marty Schneider was the owner of Hometown Heart
7 dispensaries.

8 Q. And, in general, what was the purpose of this -- actually,
9 we can -- look at the top of the document. Do you see where it
10 says "Your Telegram history" and "Heads of depots"?

11 A. Yes.

12 Q. Did you start this Telegram exchange?

13 A. Yes, I believe I did.

14 Q. And what was the purpose of this Telegram, this group?

15 A. I wanted to be able to contact all of the heads of the
16 dispensaries at the same time, as many of them were asking
17 similar questions.

18 Q. So now going down to the line from May 17th, 2018, at
19 12:17, do you see that?

20 A. Yes.

21 Q. Can you read that message and the two messages you wrote
22 right after that?

23 A. "The other thing that Ray is suggesting is that each time
24 you get money, your teams create and send an invoice back. It
25 will help with tracking and ensure that there is an audit trail

L3HPWEI3

Cozzetto - Direct

1 just in case. I'll get all the details, but I wanted to give
2 you all a heads up."

3 Q. So what were you referring to here in terms of an invoice?

4 A. What Ray had asked or what Ray had suggested is that the
5 dispensaries have their teams create an invoice that matched
6 the payment amount that they were receiving on a weekly basis.

7 Q. And was that invoice going to accurately reflect business
8 transactions that had actually occurred?

9 A. No.

10 Q. And what was the purpose of these invoices?

11 A. The purpose of the invoices was to create a fake audit
12 trail.

13 Q. And how did you know that was the purpose?

14 A. Umm.

15 Q. Did someone tell you?

16 A. Yes.

17 Q. Who told you?

18 A. Ray told me.

19 Q. Ms. Cozzetto, I'd like to continue reading from where you
20 left off through to the last message from that same day. You
21 can read everything you wrote, and I'll go ahead and read what
22 is written by the other participants.

23 So starting with that highlighted message from Marty
24 Schneider, he says: "Monday is good for us."

25 Craig Wald says: "Monday works." And Justin S says:

L3HPWEI3

Cozzetto - Direct

1 "Okay." And then what do you say?

2 A. "Thanks guys. For the invoices here is the 'bill to' info.
3 Spinwild Limited, Suites 41/42 Victoria House, 26 Main Street,
4 GX111AA Gibraltar, awesome@spinwild.xyz, www.spinwild.xyz, tax
5 ID 115894-52."

6 Q. And you can keep going.

7 A. "Any chance your teams could turn something around quickly,
8 just an invoice matching the statement you got today."

9 Q. You can keep going.

10 A. "Also, John Wang from our team is working on better
11 reporting to help with reconciliation. Justin from Natoma has
12 agreed to help and we are guinea pig."

13 Q. And what the next message say?

14 A. "Re the invoices, it doesn't have to be anything major.
15 It's just additional paperwork for the bank to have. So your
16 current invoice template with the exact dollars to match the
17 statement would be great. Thank you."

18 Q. Craig Wald says: "The invoices are in Euros. I will
19 convert to dollars and note on the invoice."

20 And then what do you say?

21 A. "I believe there's a dollar figure called out, too. Let me
22 look. I see. They don't include all the fees in dollars."

23 Q. And then what do you say?

24 A. Then it looks like I put an emoji and then "Thanks Craig."

25 Q. Craig Wald wrote: "Invoice sent."

L3HPWEI3

Cozzetto - Cross

1 A. "Thank you."

2 Q. Marty Schneider then wrote: "Sent mine to Ray."

3 A. "Thanks Marty."

4 MS. DEININGER: We can stop there.

5 One moment, your Honor. No further questions.

6 THE COURT: Cross-examination.

7 CROSS-EXAMINATION

8 BY MR. TAYBACK:

9 Q. Ms. Cozzetto, can you hear me?

10 A. Yes.

11 Q. If for any reason you can't hear me, let me know. Okay?

12 A. Thank you.

13 Q. My name is Christopher Tayback, and I represent Ray Akhavan
14 in this case. Now, you just mentioned -- and I believe you
15 looked at a chat. What was the form of that chat?

16 A. The chat we just reviewed?

17 Q. Yes.

18 A. That was a Telegram chat.

19 Q. And that was a Telegram chat without Mr. Akhavan
20 interacting with you? You were talking to other people,
21 correct?

22 A. Yes.

23 Q. Was Telegram something you used independent of meeting
24 Mr. Akhavan?

25 A. Yes, it was.

L3HPWEI3

Cozzetto - Cross

1 Q. Now, the invoices you mentioned, do you know whether they
2 were submitted to anybody outside of Eaze?

3 A. I do not.

4 Q. You don't know one way or the other, correct?

5 A. I don't know one way or the other, correct.

6 Q. And did you keep a record of those invoices, or do you know
7 whether Eaze kept a record of those invoices?

8 A. I do not know.

9 Q. One way or the other, you don't know?

10 A. Correct.

11 Q. Now, let me go back. You say your understanding of
12 Mr. Akhavan's role in the credit card processing when you first
13 got involved was that he was to make introductions to people
14 that could be helpful to Eaze?

15 A. That was my understanding at the beginning, yes.

16 Q. And that he would act as an intermediary with various
17 participants in the credit card processing world?

18 A. Yes.

19 Q. And did he, in fact, do that?

20 A. Yes, I believe he did.

21 Q. I mean, to your knowledge, with your involvement with him,
22 he introduced you to other people that do other things that
23 said EUprocessing, for example, correct?

24 A. Yes.

25 Q. Now, at the time that you were an employee at Eaze, you

L3HPWEI3

Cozzetto - Cross

1 were an executive, correct?

2 A. I was an executive, yes.

3 Q. What was your title?

4 A. My title was senior vice president of operations.

5 Q. And did you report to Mr. Patterson?

6 A. No, I did not.

7 Q. To whom did you report?

8 A. I reported to Nick Fasano.

9 Q. And was Mr. Patterson CEO at any point in time while you
10 were employed there?

11 A. Yes, he was.

12 Q. Was he the CEO for the entire time?

13 A. Yes, he was.

14 Q. So in some sense, he was -- you didn't report directly to
15 him but ultimately to him?

16 A. Nick reported directly to Jim; so yes.

17 Q. Now, is it fair to say that Mr. Patterson, in your view,
18 was the driver for finding a credit card solution for Eaze?

19 A. Yes.

20 Q. It was very important to Mr. Patterson, wasn't it?

21 A. Yes, it was.

22 Q. And he expressed that on a number of occasions?

23 A. Yes, that's my recollection.

24 Q. In fact, at one point in time, didn't he tell you that
25 credit cards were part of the flywheel to drive revenue and

L3HPWEI3

Cozzetto - Cross

1 grow Eaze?

2 A. Yes, he mentioned that at an executive meeting.

3 Q. And what did you understand him to mean by that?

4 A. My understanding was that, you know, a flywheel is
5 something that gains momentum as it turns, and so credit cards
6 were an important thing that -- if I recall correctly what Jim
7 explained, was credit cards can gain us more customers.

8 Customers can gain us more revenue. More revenue can gain us
9 more growth, and the flywheel will continue to improve.

10 Q. And Mr. Patterson was focused on increasing the revenues at
11 Eaze, correct?

12 A. Yes.

13 Q. In fact, Mr. Patterson suggested that Eaze operate on
14 multiple credit card platforms, correct?

15 A. Yes.

16 Q. That is to say, in addition to whatever Mr. Akhavan was
17 able to help with, Mr. Patterson was looking to do business
18 with other credit card processors as well?

19 A. Yes, that's what I recall.

20 Q. And did you have any role in dealing with other credit card
21 processors besides those that Mr. Akhavan introduced you to?

22 A. I did not, no.

23 Q. Was there someone else in the company that was responsible
24 for that?

25 A. Yes, I believe so.

L3HPWEI3

Cozzetto - Cross

1 Q. Who was that?

2 A. I don't recall exactly, but I believe it was Dan Erickson
3 or John Wang.

4 (Continued on next page)

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L3HAWEI4ps

Cozzetto - Cross

1 Q. Now, in your interactions with Mr. Akhavan, did he
2 emphasize that it was important that the banks, the acquiring
3 banks, knew what it was that they were processing?

4 MR. GIBERT: I'm sorry. Counsel, it's a little hard
5 to hear you.

6 MR. TAYBACK: I'm sorry. Is this better?

7 A. Yes. Thank you.

8 Q. Ms. Cozzetto, is it true that during your interactions with
9 Mr. Akhavan with respect to your time at Eaze, that you
10 understood him to say that it was important that the acquiring
11 banks know that they were processing marijuana?

12 A. I don't remember that conversation.

13 Q. Is it fair to say that Mr. Akhavan stressed to you the
14 importance that he be honest with the banks that he dealt with?

15 A. He stressed to me that it is important that the dispensary
16 be honest.

17 MR. TAYBACK: May I have a moment, your Honor?

18 THE COURT: Yes.

19 Q. Now, at one point when you were at Eaze, you dealt with
20 another card processor called Card Connect?

21 A. Eaze dealt with Card Connect I believe, yes.

22 Q. Was that sometimes referred to as First Data?

23 A. I don't remember exactly.

24 Q. Let me ask you to take a look if you can at Exhibit GX 303,
25 at page 3. It's part of that same Telegram chat that you just

L3HAWEI4ps

Cozzetto - Cross

1 looked at.

2 MR. GIBERT: I'm sorry, Mr. Tayback. It's a little
3 hard to hear.

4 MR. TAYBACK: I'll try to keep my voice up. Maybe
5 that's a little bit better.

6 Q. Do you have that document in front of you?

7 A. Yes, I do.

8 Q. If I could direct your attention to the middle of page 3 of
9 this document, of this chat, where it says 11.7.2018 at 13:52
10 and 35 seconds, down to 11.7.2018 at 14:50 and 23 seconds. Do
11 you see that?

12 A. Yes.

13 Q. Now, you were making a number of sequential statements
14 here, correct?

15 These are all by you.

16 A. Yes. These are all by me.

17 Q. You indicate to the group that's on this chat, "Hi
18 everyone. You may have already heard this, but Card
19 Connect/First Data is closing the accounts." You see that?

20 A. Yes.

21 Q. What was happening at this moment in time?

22 A. Sorry. Just please let me read this.

23 Q. Yes. Please do.

24 A. Card Connect/First Data was, from what I recall, another
25 processing solution that had come up. I was informing the

L3HAWEI4ps

Cozzetto - Cross

1 dispensaries that Processing Solution was going down, Eaze
2 would be stopping processing on the solution, and that they
3 should be aware that Card Connect/First Data was going to owe
4 the dispensaries money.

5 Q. And that was of concern to you, correct?

6 A. I'm sorry?

7 Q. That was of concern to Eaze.

8 A. Yes. That was of concern to Eaze and to me.

9 Q. You didn't want them to hold the dispensary's money, right?

10 A. Right.

11 Q. Now, you go on to say further down that chat, "We are
12 taking the position that First Data is being fraudulent because
13 we were very clear that we were in the cannabis industry." You
14 see that?

15 A. Yes.

16 Q. Now, when you say you were very clear that you were in the
17 cannabis industry, do you know where -- withdraw that.

18 Mr. Akhavan is not affiliated with Card Connect or
19 First Data to your understanding, right?

20 MS. DEININGER: Objection, foundation.

21 THE COURT: Sustained.

22 Q. To your interactions with Mr. Akhavan, you didn't interact
23 with him with respect to the Card Connect/First Data work,
24 correct?

25 A. Correct.

L3HAWEI4ps

Cozzetto - Cross

1 Q. Now, you say that "we are taking the position that First
2 Data is being fraudulent." You never level -- meant to say
3 that Eaze never leveled that accusation against Mr. Akhavan in
4 connection with the credit card processing work that he was
5 doing, correct?

6 A. Not to my knowledge.

7 Q. And -- not to your knowledge, correct?

8 Is that what you said?

9 A. Yes. Not to my knowledge.

10 Q. Now, you sometimes refer to the dispensaries as depots.
11 Right?

12 A. Yes.

13 Q. If you could take a look at Exhibit GX 715.

14 Now, you're talking, in this particular -- you looked
15 at this email exchange in the course of your direct testimony.
16 Do you remember that?

17 A. Yes, I did.

18 Q. And you talk about the different names that might be used
19 by a particular dispensary for opening accounts, correct?

20 A. Yes.

21 MR. TAYBACK: You can take this down. Thank you.

22 Q. It's true, isn't it, that it was your experience even
23 before meeting Mr. Akhavan that dispensaries often did business
24 in multiple names. Correct?

25 A. Yes, that's correct.

L3HAWEI4ps

Cozzetto - Cross

1 Q. And they would sometimes have the name of a dispensary that
2 might be on the store itself. That would be one name.

3 Correct?

4 A. Yes. That could happen.

5 Q. And then they would have sometimes a holding company. It
6 would be a different name. Correct?

7 A. Yes.

8 Q. And that wasn't uncommon. Isn't that right?

9 A. I can't speak to how common it was. I can say that that is
10 certainly what someone at a dispensary told me they did.

11 Q. In your experience, that was not unusual.

12 A. It wasn't unusual with the dispensaries that I met through
13 doing business at Eaze.

14 Q. Now, it's true, isn't it, that the names of the
15 dispensaries or the holding companies sometimes were references
16 to marijuana, but sometimes weren't?

17 A. Yes, that's correct.

18 Q. In fact Eaze, the name Eaze itself is not necessarily a
19 marijuana reference, correct?

20 A. Correct.

21 Q. I want to ask you some questions about the March 2018
22 meeting that you went to in Calabasas. Do you recall
23 testifying about that?

24 Before that meeting, it was your understanding that
25 credit card processing for Eaze had gone down in January of

L3HAWEI4ps

Cozzetto - Cross

1 2018?

2 A. That's correct.

3 Q. And that Eaze therefore was not accepting credit cards for
4 a period of about four or five months?

5 A. Yes. I don't remember exactly how -- it would be, I
6 believe, January through April or May, yes.

7 Q. Now, the triggering event for that, was that the
8 legalization of marijuana in California, on January 1st, for
9 more than medical purposes?

10 A. What I recall Jim telling the company was that credit cards
11 went down because chargebacks were so high.

12 Q. Do you actually know that to be the case?

13 A. I don't know if that's the case or not.

14 Q. Now, at the meeting you went to in March, the idea was to
15 try to find the credit card solution, correct?

16 A. Yes. That's my understanding.

17 Q. At that point in time, I think you said that Mr. Patterson
18 was the one who had told you that you should attend the
19 meeting?

20 A. Nick Fasano told me, but my understanding was that Jim had
21 instructed Nick.

22 Q. There was some testimony on direct about not being -- about
23 having phones at the meeting. Do you recall that?

24 A. Yes.

25 Q. You did bring phones, correct, to the meeting?

L3HAWEI4ps

Cozzetto - Cross

1 A. I believe I had my cellphone in my purse under -- I believe
2 I had my cellphone in my purse.

3 Q. And in fact Mr. Patterson convened a conference call while
4 he was in the car driving over, correct?

5 A. Yes, that's correct.

6 Q. Because you caravanned the two different cars. Right?

7 A. Yes. That's what I remember.

8 Q. The Eaze representatives as well as the dispensary
9 representatives?

10 A. Yes.

11 Q. And Mr. Patterson actually left that meeting early?

12 A. I don't remember if he left the meeting early.

13 Q. The idea of not having your phones, was that
14 Mr. Patterson's? He told you that?

15 A. I can't remember if it was Nick or Jim who told me that.

16 Q. The idea was not to be interrupted during the meeting?

17 A. Um, I'm not quite sure, honestly, why, why they said that.

18 Q. Did you take your phone with you, or just turn it off?

19 A. I can't remember exactly what I did with my phone.

20 Q. Let me ask you if you could estimate for me the number of
21 people in this meeting.

22 A. I would say maybe between 12 and 20.

23 Q. Now, this 12 to 20 people, was it your impression that
24 Mr. Akhavan did not know any of the people who were
25 representatives of the dispensaries until this meeting?

L3HAWEI4ps

Cozzetto - Cross

1 A. I don't know he didn't know any of them, but I'm pretty
2 confident that he was meeting some people for the first time.

3 Q. And when he -- when Mr. Akhavan spoke, did he appear to be
4 wanting to keep what was being said a secret?

5 A. I'm sorry. Can you repeat that?

6 Q. Did Mr. Akhavan ever say that you needed -- that people who
7 attended this meeting needed to keep it secret?

8 A. I don't remember.

9 Q. You don't remember him saying that.

10 A. I don't remember him saying that.

11 Q. Now, did you find Mr. Akhavan scary, at this meeting?

12 A. No, not at all.

13 Q. Did he say anything to you about your attendance?

14 A. About my attendance?

15 Q. Yes.

16 A. The only thing he said to me when I met him was -- I think
17 that's when Jim said, "Darcy will be your main point of
18 contact," and he kind of smiled and said, "I should have known
19 because the only woman in the room is usually the one that gets
20 things done."

21 Q. You viewed that as a compliment?

22 A. Yes.

23 Q. The dispensaries themselves that were there, those were all
24 of -- those were Eaze's dispensaries, correct?

25 A. They were Eaze's partners, yes.

L3HAWEI4ps

Cozzetto - Cross

1 Q. And they were the partners that Eaze had invited to this
2 particular meeting. Correct?

3 A. Yes.

4 Q. That is to say, Mr. Akhavan didn't directly reach out to
5 these depots or dispensaries, to your knowledge, to invite
6 them. Correct?

7 A. Not to my knowledge.

8 Q. Now, you said that Mr. Akhavan during this meeting
9 expressed -- rather, explained, credit card processing. Do you
10 recall that?

11 A. Yes.

12 Q. Did you find that he sounded knowledgeable to you?

13 A. Yes, I did.

14 Q. And I believe you said, and I'd like to make sure, that you
15 said that it was important that he said that the dispensaries
16 fill out honest applications, correct?

17 A. Yes.

18 Q. And as you sit here today, is it fair to say that you have
19 no idea what those applications looked like when they reached
20 the acquiring bank at which accounts were open, correct?

21 A. Yes.

22 Q. You don't know one way or the other.

23 A. I don't know one way or the other.

24 Q. And Mr. Akhavan also discussed rates, didn't he, what rates
25 would need to be charged for credit card processing?

L3HAWEI4ps

Cozzetto - Cross

1 A. Yes. I don't recall if he discussed exact numbers, but he
2 did, if I recall correctly, mention that the rates would be
3 higher.

4 Q. And the reason for that is because this was a high-risk
5 business, correct?

6 A. That was my understanding.

7 Q. And by "high risk," you knew that that covered a lot of
8 things that were both legal and illegal. Correct?

9 A. My understanding of "high risk" was maybe industries that
10 were not clearly delineated on like the merchant code, etc.

11 Q. And that's an understanding that you got from your work
12 with Eaze?

13 A. That's an understanding I got from that meeting.

14 Q. Now, there were fees that were charged to the dispensaries
15 in connection with the processing of credit cards for their
16 merchandise, through Eaze. Correct?

17 A. Yes, I believe so.

18 Q. And isn't it true that the dispensaries were charged about
19 32 percent?

20 A. I'm not sure what the final charges were for the
21 dispensaries.

22 Q. Is it your recollection that the dispensaries were
23 charged -- originally Eaze's share of that charge to the
24 dispensaries was 28.75 percent?

25 A. The 28.75 percent that I'm aware of was a fee between the

L3HAWEI4ps

Cozzetto - Cross

1 dispensaries and Eaze for -- to utilize Eaze technology
2 platform. I don't remember 28.75 was for credit cards.

3 Q. So Eaze charged the dispensaries approximately 28.75
4 percent, correct?

5 A. As part of the contract with the dispensaries, yes.

6 Q. And if there was some additional fee for credit card
7 processing, that would have been an additional amount that came
8 out of whatever amount the dispensaries would ultimately
9 receive, correct?

10 A. I'm not sure if the credit card fees were attached to the
11 Eaze fees or if that was separate, but I don't know the
12 financials.

13 Q. You don't know one way or the other.

14 A. I don't know.

15 Q. You do know that the amount that Eaze charged was 28.75
16 percent, correct?

17 A. That was what Eaze was attempting to charge when I was
18 there, yes.

19 Q. Now, is it true that at the time you worked at Eaze, you
20 didn't believe you were committing bank fraud?

21 A. From what I recall, I, I -- I did think we were committing
22 bank fraud.

23 Q. Let me ask you this. Did you ever look up what bank fraud
24 was?

25 A. No. I don't recall doing that.

L3HAWEI4ps

Cozzetto - Cross

1 Q. And in fact when you heard that the government charged this
2 case, in -- a year ago, in March of last year, you didn't reach
3 out to the government to say that you had information about
4 this, correct?

5 A. No, I didn't.

6 Q. You waited for the government to contact you?

7 A. Yes.

8 Q. And that occurred around October of last year?

9 A. Yes, I believe so.

10 Q. And is it true that your interactions on behalf of Eaze,
11 you never reached out to any issuing bank, that is to say any
12 bank that issues a credit card to some consumer that was used
13 to purchase marijuana, correct?

14 A. Did I reach out to an issuing bank?

15 Q. Yes.

16 A. No, I did not.

17 Q. In fact what was discussed at that March meeting were
18 interactions with the acquiring banks, correct, the ones that
19 would represent the merchants?

20 A. I don't recall exactly.

21 Q. And is it true that what you know about merchant category
22 codes is simply what you learned from Mr. Akhavan?

23 A. Yes.

24 Q. And what you know about merchant descriptors you also
25 learned from Mr. Akhavan?

L3HAWEI4ps

Cozzetto - Cross

1 A. Yes.

2 Q. Did you have an understanding that the merchant banks, the
3 acquiring banks, were based in Europe?

4 A. Yes. I believe he mentioned that during the meeting.

5 Q. And do you know anything about those banks, other than the
6 fact they were based in Europe?

7 A. No. The only thing I remember is the story of the
8 terminally ill gentleman that I shared.

9 Q. And you don't know whether -- let me ask you this. You've
10 never reviewed, for example, the Visa or MasterCard rules
11 regarding the use of their credit cards or debit cards,
12 correct?

13 A. Have I reviewed the rules? No, I don't believe I have.

14 Q. So, for example, you don't have any knowledge about whose
15 responsibility it is to ensure the accuracy of merchant
16 information when they go onto the credit card network.

17 Correct?

18 MS. DEININGER: Objection, foundation.

19 THE COURT: Sustained.

20 MR. TAYBACK: I have no further questions, your Honor.

21 THE COURT: Cross-examination from Weigand counsel.

22 CROSS-EXAMINATION

23 BY MR. GILBERT:

24 Q. Good morning, Ms. Cozzetto.

25 A. Good morning.

L3HAWEI4ps

Cozzetto - Cross

1 Q. My name is Michael Gilbert. I represent Ruben Weigand in
2 this case. You and I have never met before, correct?

3 A. Correct.

4 Q. Ms. Cozzetto, you became involved in the credit card
5 processing for Eaze in about January or February of 2018; is
6 that correct?

7 A. Yes.

8 Q. And at that point you had been working at the company for
9 several months?

10 A. I started in October of 2017.

11 Q. You had no prior experience with credit card processing?

12 A. No.

13 Q. You got involved because you were told -- you were
14 requested to do so by your superior at the company?

15 A. I got involved because the dispensary -- interviews with
16 the dispensaries was a big part of my job, and they were very
17 upset in January and February because funds were being held,
18 and I got involved -- I, I believe I asked Jim if I could have
19 a contact to try to get some of those funds released.

20 Q. And so there was a significant problem at the company at
21 the time because the credit card processing was not working.

22 A. Yes.

23 Q. And as a result, the company was using cash only.

24 A. The customers were paying in cash. Correct.

25 Q. And that resulted in many problems with the drivers getting

L3HAWEI4ps

Cozzetto - Cross

1 robbed from time to time?

2 A. Yes. It resulted in multiple problems.

3 Q. Well, what were the other problems?

4 A. What I recall, there were driver safety issues, there were
5 dispensary safety issues, so, because the dispensaries were
6 keeping quite a lot of cash on hand, they were also targets
7 potentially. There was a situation where one of our vendors
8 was robbed. There was also issues with consumers. Many
9 consumers don't feel comfortable paying for something with cash
10 online, especially, you know, if it's a cannabis product.

11 Q. There were many reasons why getting the credit card
12 processing to work again was an important priority for the
13 company.

14 A. Yes.

15 Q. And starting in about April of 2018, you became the point
16 person at Eaze who was in charge of communications with
17 EUprocessing?

18 A. Yes.

19 Q. Is it fair to say you were the account manager for Eaze,
20 essentially?

21 A. I would say I was the project manager, but, yes, I think
22 "account manager" is fair too.

23 Q. And you were the person at Eaze who had the most contact
24 with EUprocessing; is that correct?

25 A. I believe so, yes.

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Cozzetto - Cross

1 Q. And the way in which you communicated with EUprocessing was
2 through a specific email address that you testified about,
3 correct?

4 A. Yes.

5 Q. And that was EUprocessing@protonMail?

6 A. Yes.

7 Q. And you continued in this role as the project manager or
8 primary point of contact from approximately April of 2018 until
9 you left the company in September of 2018; is that correct?

10 A. Yes.

11 Q. In all that time, your communications with EUP were through
12 the EUprocessing@protonMail.com email address, correct?

13 A. I'm sorry. Could you repeat the last part of that
14 question?

15 Q. In that time period of April 2018 through September of
16 2018, your communications with EUP were through this one email
17 address, EUprocessing@protonMail.com --

18 A. Yes.

19 Q. -- primarily?

20 A. Yes.

21 Q. And -- I have a hard time hearing you. I'm sorry.

22 It's correct, Ms. Cozzetto, that in that entire time
23 period it was always your understanding that when you were
24 communicating with EUprocessing@protonMail.com, you were
25 speaking to somebody named Andres?

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Cozzetto - Cross

1 A. Yes. That was my understanding.

2 Q. And at no time did you ever believe that you were
3 communicating on EUprocessing at ProtonMail.com with Ruben
4 Weigand. Is that correct?

5 A. That is correct.

6 Q. Now, before you came to testify today, I think, as you
7 already testified, you met with the government.

8 A. Yes.

9 Q. And you started -- you had your first meeting with the
10 government in October of 2020? Is that correct?

11 A. Yes.

12 Q. And that was a frightening event for you? Is that fair to
13 say?

14 A. It was not a very pleasant experience. Yes.

15 Q. You, I believe you testified that you thought you were
16 engaged in a federal crime of bank fraud for some period of
17 time before you had that meeting. Correct?

18 A. Yes. I was very nervous at that meeting.

19 Q. But understood that you had to answer questions truthfully.
20 Correct?

21 A. Yes.

22 Q. And when you met with the government for the first time on
23 October 9th of 2020, you were asked the name Ruben Weigand.
24 Correct?

25 A. Yes, I believe so.

L3HAWEI4ps

Cozzetto - Cross

1 Q. And what you said was that you had heard the name from
2 media reports. Correct?

3 A. I don't remember exactly what I said, but yes. I -- I
4 wasn't very familiar with the name, I believe.

5 Q. Well, if you don't remember exactly what you said --

6 MR. GILBERT: Could we please place, in front of the
7 witness only, 3507-03 at page 6.

8 THE COURT: And while we're doing that, counsel, keep
9 in mind we're going to take our lunch break in a few minutes.

10 MR. GILBERT: Thank you, Judge.

11 Q. I'm going to ask you, Ms. Cozzetto, if you could look at
12 this document that's in front of you. Does that refresh your
13 recollection that you saw Weigand's name in the media, and that
14 was what you told the government?

15 A. Yes, it does. Thank you.

16 Q. Thank you.

17 And you met with the government again after that
18 meeting on October 9th of 2020. Correct?

19 A. Yes.

20 Q. It was about a week later. Does that sound familiar?

21 A. Yes. Yes, it does.

22 Q. In that meeting, the government again asked you about Ruben
23 Weigand. Isn't that correct?

24 A. I don't recall exactly.

25 MR. TAYBACK: Can we please show the witness only

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Cozzetto - Cross

1 3507-05, at page 6.

2 Q. I'm going to place in front of you -- you'll see on the
3 screen there's another document. And I'm going to ask you if
4 looking at that document refreshes your recollection that you
5 told the government in your second meeting with them that you
6 had heard about Ruben Weigand only through a media report.

7 A. Yes, it does. Thank you.

8 Q. And did you also tell the government in that meeting that
9 you didn't recall Ray Akhavan ever mentioning somebody named
10 Ruben Weigand to you? Do you remember that?

11 A. I don't remember that. And I -- I'm not sure if that was
12 captured correctly from that interview.

13 Q. Well, if you don't remember let's also look again at
14 3507-05, again at page 6. Does that refresh your recollection
15 that you told the government that you didn't recall Ray Akhavan
16 ever mentioning someone named Ruben Weigand?

17 A. What I recall from looking at this is that the government
18 was asking me about a specific Telegram chat, in which Ray
19 mentioned, "You all met Ruben in LA." And I didn't remember
20 that chat specifically.

21 Q. And did you remember -- you didn't recall the chat that
22 referenced you having met Ruben in LA. Is that what you're
23 saying?

24 A. Correct.

25 Q. So you had no recollection of ever meeting Ruben in LA. Is

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1 that what you said?

2 A. I have no recollection of ever meeting Ruben at all,
3 including that meeting in LA.

4 Q. Thank you.

5 MR. GILBERT: This would be a good time we could
6 break.

7 THE COURT: All right, ladies and gentlemen. We'll
8 give you your lunch break and we'll resume in an hour. Thank.
9 You very much.

10 (Continued on next page)

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1 (Jury not present)

2 (Witness excused)

3 THE COURT: How much longer do you have on cross,
4 Mr. Gilbert?

5 MR. GILBERT: I would estimate 20 minutes.

6 THE COURT: OK. And who's the next --

7 MR. GILBERT: I'm sorry.

8 THE COURT: Oh, I'm sorry. Please.

9 MR. GILBERT: Judge, I'm going to amend my answer. It
10 may be 30 minutes.

11 THE COURT: OK.

12 MS. LA MORTE: And our next witness will be --

13 MS. DEININGER: -- will be Michael Steinbach from
14 Citibank.

15 THE COURT: OK. And how long will he be on direct?

16 MS. DEININGER: About an hour.

17 THE COURT: OK. So that will take us to the end of
18 the day.

19 All right. I forgot to mention this morning, all of
20 you very kindly submitted your letter briefs on the question
21 that I raised about whether as a matter of law the defense
22 theory of materiality could not be sustained. And both sides
23 seem to agree that while it may have other difficulties that
24 will be explored before the case goes to the jury, that the
25 question of whether the Court could withdraw the issue of

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1 materiality as a matter of law in this case is not something
2 the Court should do. So I won't do it.

3 I will note that you guys are very young. For
4 example, the government in its letter of March 16th says, "As
5 an initial matter, as the Court is well aware, it has long been
6 established that materiality is an element of bank fraud to be
7 submitted to the jury." Now actually, for the first 150-plus
8 years of the Anglo-American legal system in this country and
9 going back many hundred years earlier to the English common
10 law, materiality was a question for the court, not for the
11 jury. This only changed in the early 1990s, when a number of
12 defense counsel began raising the notion that it really was a
13 jury question because it was fact-related. For example, in the
14 case of *United States v. Levine*, a D.C. Circuit case, the then-
15 defense counsel Jerry Rakoff successfully argued that it was a
16 matter of fact, not a matter of law. And eventually the
17 Supreme Court so held, and the first real case was *Gaudin*,
18 which is 1995. And I was so thunderstruck that I figured I'd
19 better become a judge at that point.

20 But that's not really the point I was making. The
21 point I was making is not that materiality isn't a question for
22 the jury if it's a matter of fact. The question is whether
23 there are certain definitions of materiality or certain
24 concepts of materiality that are void as a matter of public
25 policy, so to speak, and therefore cannot be asserted even if

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1 the facts supported them, because they contemplate a violation
2 of the law.

3 So I don't think the issue is quite what you guys
4 addressed in your letters. But on the other hand, you're happy
5 to have it submitted to the jury. I won't disturb that. There
6 goes the chance to have it resolved on appeal.

7 Now, the government raised a different question, which
8 is whether and to what extent the issue can go to the jury
9 because of alleged lack of evidence. We'll take that up at a
10 later point.

11 OK. Anything else we need to take up today? Or right
12 now?

13 MR. BURCK: Your Honor, I had --

14 THE COURT: Oh, yes. Let's finish that.

15 MR. BURCK: Thank you, your Honor.

16 THE COURT: Thank you very much.

17 So that was the slide about -- and I asked you why it
18 wasn't hearsay.

19 MR. BURCK: Right, your Honor. And so there are two
20 answers to that. So the context here is that we have a Visa
21 witness speaking to acquiring banks, issuing banks, and senior
22 executives of Visa. This is what he testified to in his
23 presentation. The government elicited from him that one of his
24 colleagues had also spoken to issuing banks and acquiring banks
25 about the same topic, and the purpose the government had for

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1 eliciting that testimony was clear, was that Visa was
2 reiterating its policy that you cannot do marijuana
3 transactions on our network. Now, in this separate
4 presentation, done by that very witness, he's speaking to the
5 same people, and what he's saying to them is, marijuana sales
6 in the United States are booming. And he's looking at it
7 historically and he's looking at also future growth.

8 And so the point of this slide, your Honor, which is
9 why we think it's very -- it's relevant and it's not hearsay,
10 is that it goes to the state of mind of the listeners, who are
11 the very customers who are at issue in this case, the issuing
12 banks in particular. And here's what Visa is talking to them
13 about. And what's important about this set of slides as well,
14 your Honor, is that there's nothing in these slides that
15 actually has Visa say anything like they do in the other
16 slides, which is, oh, by the way, nobody should be selling
17 marijuana. There's nothing in the slides that says that. In
18 fact, it's all about the fact that there is this change, a
19 shift in the law at the state level. It's still federally
20 illegal. They have a slide on that. And then there's a slide
21 that talks about the business of booming in marijuana. So,
22 your Honor, our point, and the reason why we think it's
23 relevant and admissible, is that the state of mind of the
24 issuing banks, the alleged victims of this crime, Visa is the
25 network that is at the center of trying to protect them from

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1 these crimes. And what you have here is Visa speaking to the
2 victims and saying, gosh, there's a lot of money out there.

3 I'm not going to draw anything from that, your Honor.
4 I'm not going to argue it with the witness. But the point is
5 that this slide itself shows him speaking to his people and
6 saying, look, it's a big business, folks. And we think that's
7 relevant. It goes right to the motives. It goes right to the
8 defense that --

9 THE COURT: My recollection is that you offered this
10 slide before putting to the witness anything about why he --
11 what his purpose was, or what its significance was to this
12 audience or anything like that, anything in the way of a
13 foundation. You just offered it cold. And as offered cold, it
14 seems to me it suffered, among other things, from hearsay
15 problems.

16 But what you're now saying, as I understand it, is
17 that Visa -- I'm sorry. What was his presentation?

18 MR. BURCK: 2019, your Honor. He estimated 2018 or
19 2019. I think from the context it's clearly 2019.

20 THE COURT: So this is after the --

21 MR. BURCK: This is during --

22 THE COURT: During the conspiracy. And so you're
23 saying he is saying to this audience, this is a very lucrative
24 business, as opposed to saying, this is a growing business,
25 we've got to watch out, 44. And he is at least arguably the

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1 relevant person, from an enforcement standpoint, at Visa, and
2 the issuing banks rely on Visa, etc.

3 All right. So now I understand the argument, let me
4 hear from the government.

5 MS. DEININGER: Your Honor, we do agree that this is
6 improper hearsay and that it should be excluded under Rule 403.

7 I think one thing I want to clarify is who the
8 audience was. The presentation that the government put in was
9 a public document that was made at a public summit that all the
10 Visa clients, issuers and acquirers, were invited to attend.
11 What the witness testified with this document was that it was
12 presented to an internal Visa executive council that might have
13 had one or two representatives of issuers or acquiring banks
14 who were participants. And the whole -- and the witness is no
15 longer on the stand to be able to explain that.

16 But in general, to the extent that they are seeking to
17 get this in on materiality based on the potential U.S. revenue
18 from marijuana, we believe that they are seeking to get it in
19 for the truth and not the impact on Visa's state of mind, which
20 has other public statements where they reiterated their rule
21 that marijuana transactions would not be permitted in this same
22 time frame.

23 THE COURT: Well, in addition to that, since their
24 argument is that part of the motive of the issuing banks and
25 Visa to allow marijuana sales to go through disguised credit

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1 cards was the income generated from it, the relevant time
2 period for the great majority of events was before this.

3 So they would have -- I take it the defense is not
4 arguing that, we thought the marijuana business was a tiny
5 little business until the very end of the conspiratorial
6 period, when we concluded it was huge.

7 MR. BURCK: No, your Honor. But if you look at the
8 slide, the slide speaks to 2016 through 2020.

9 THE COURT: But you're not offering it for its truth.
10 You're offering it for the state of mind of the witness and
11 indirectly Visa at the time it was shown to these other people.

12 MR. BURCK: Absolutely, your Honor, because --

13 THE COURT: So the fact that it showed -- so it cannot
14 be used, even if I were to allow it in, you could not say to
15 the jury, this shows that marijuana sales in 2018 --

16 MR. BURCK: No. Not at all, your Honor.

17 THE COURT: -- were such and such or etc.

18 MR. BURCK: Not at all, your Honor. We would not
19 intend to do that.

20 Your Honor, could I just address a couple things that
21 Ms. Deininger said which I don't think are at all what the
22 witness testified to? I think she said that he said that there
23 were one or two acquiring banks or issuing banks in this
24 executive council. That's not in the transcript at all, your
25 Honor. He said that there were acquiring banks and issuing

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1 banks who were members of this council, along with Visa. So
2 that the idea that there was maybe one or two there, I don't
3 know where that's coming from. Maybe that's from her own
4 discussion with the witness, but that's not what he said.

5 MS. DEININGER: Well, he said -- organizations -- he
6 said it was an executive council that Visa convened, not a
7 public forum.

8 I also would just note --

9 THE COURT: I have a 1 o'clock telephone conference
10 that's in one minute. So here's -- I want to see -- and this
11 can be presented to me either the same afternoon at the end of
12 the day or, if you can't get it by then, you could just send it
13 to my law clerk tonight, the pages of the transcript of this
14 case that preceded the offer of this exhibit. Because, among
15 other things, I don't recall the argument that's being made now
16 having been made at that time, or the foundation laid for that
17 argument. But I could be wrong.

18 So anyway, forgive me but I've really got to take this
19 other call.

20 MR. BURCK: Thank you, your Honor.

21 (Recess)

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Cozzetto - Cross

A F T E R N O O N S E S S I O N

1:49 P.M.

(Trial resumed; jury not present)

THE COURT: Please be seated.

Jimi, would you tell Linda to bring up the jury.

THE LAW CLERK: Will do right now, Judge.

THE COURT: Okay. I don't know if you had a chance, probably not, to get the transcript that I had mentioned. The only reason I mention that is I have another in-court matter at 4:00 today; so we're going to have limited time at the end of the day to deal with anything, but it can come up here, we can take it tomorrow morning as well.

MR. BURCK: Your Honor, we were going to ask if we could have until this evening because that's when we'll have the actual official transcript.

THE COURT: That's fine. So just so you know, if I had to rule right now, I would still exclude it, partly on the 403 grounds, but I think it's a close enough call that I want to see the transcript.

MR. BURCK: Okay, your Honor. Thank you.

THE COURT: Secondly, at 4:00 today, I have a matter. So if you are going to take up that question of completeness or whatever, you should either start that right now or take it up at 3:45, if it's going to come up tomorrow, and then tomorrow morning I have a guilty plea from 9:00 to 9:30; so again, we'll

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Cozzetto - Cross

1 only have 15 minutes tomorrow to deal with any of these.

2 MS. LA MORTE: Mr. Folly is going to start now with
3 the post-arrest.

4 THE COURT: All right. Let me get my notes. All
5 right. So as I understand it, the government intends to
6 introduce two passages from Mr. Weigand's post-arrest
7 statement. In the first passage, Mr. Weigand indicates that he
8 had vague knowledge of Eaze and having seen it on billboards
9 and such, but had "no involvement in Eaze." So I take it
10 that's being introduced as a false exculpatory statement, yes?

11 MR. FOLLY: Yes, your Honor.

12 THE COURT: And second, in the second passage,
13 Mr. Weigand told the FBI agent that a particular e-mail
14 address, EUprocessing@ProtonMail.com, was not his e-mail
15 address, and he did not use this address. And again, that is
16 being introduced as a false exculpatory statement, yes?

17 MR. FOLLY: Yes, your Honor.

18 THE COURT: Okay. So with respect to that second
19 portion, taking that up first, the government would include
20 that with the statement from Mr. Weigand "it's, obviously, not
21 my e-mail address."

22 The defense -- he had said earlier that he might have
23 heard of it. The defense would like to add the following on
24 this aspect: The agent says, like, where have you heard it?
25 Whose e-mail address is it then? You're connected in that

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Cozzetto - Cross

1 world, right? So whose e-mail address is it, if not yours?"

2 Mr. Weigand says: I think I need to -- I don't know how to
3 continue this without having --

4 THE DEPUTY CLERK: Jury entering the courtroom.

5 THE COURT: To be continued.

6 (Jury present)

7 THE COURT: Please be seated. So I apologize to juror
8 No. 11. I only just noticed now what a beautiful outfit you're
9 wearing today that, again, puts to shame so many of the men of
10 this jury. So anyway, duly noted now.

11 Okay. Let's continue.

12 MR. GILBERT: Thank you, your Honor.

13 THE COURT: Oh, we need the witness.

14 MR. GILBERT: We are missing one important piece here.
15 No further questions.

16 THE COURT: I thought you were going to say the
17 witness was unresponsive. Okay.

18 MR. GILBERT: Thank you, your Honor.

19 CROSS-EXAMINATION RESUMED

20 BY MR. GILBERT:

21 Q. Good afternoon, Ms. Cozzetto.

22 A. Good afternoon.

23 Q. I usually don't have this problem, but I'm told the
24 microphone might not be working perfectly; so if you have any
25 problems, just let me know and I'll repeat the question.

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Cozzetto - Cross

1 A. Thank you.

2 Q. So I believe before we broke, you testified that you had no
3 recollection of ever meeting Ruben Weigand, correct?

4 A. Yes, that's correct.

5 Q. Now, you were asked on direct examination about a meeting
6 in March of 2018. I believe you said that you met an associate
7 of Mr. Akhavan; do you recall that?

8 A. Yes.

9 Q. And that you thought that person was someone in their 30s
10 or 40s?

11 A. Yes.

12 Q. Now, when you met with the government in October of last
13 year, you didn't mention at that time that you recalled this
14 person at the meeting, did you?

15 A. I don't recall if I did or not.

16 Q. Well, do you recall whether the first time you mentioned
17 this associate of Mr. Akhavan's to the government was just a
18 few weeks ago when you met with the government to prepare for
19 trial?

20 A. I do not recall when I first mentioned the associate to the
21 government.

22 Q. If we can show the witness, please, 3507. 3507, please.
23 Just the witness. My apologies. It's 3508 -- 3507008.

24 Do you see that on the screen now?

25 A. Yes, I do.

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Cozzetto - Cross

1 Q. Does this refresh your recollection that you talked to the
2 government about this male, brown hair, age 30 to 40 in or
3 about March 5th of 2021?

4 A. Yes. Thank you.

5 Q. And was that -- at some point, Ms. Cozzetto, you learned
6 that you might be getting immunity in this case, correct?

7 A. Yes.

8 Q. And did you learn about that at about the time of the
9 meeting that we were just talking about in March of 2021?

10 A. I don't recall when that conversation first came up.

11 Q. Do you recall whether it was -- there was any discussion
12 about you receiving immunity when you met with the government
13 back in October?

14 A. I don't remember exactly, but I don't believe there was a
15 discussion in October.

16 Q. It was more recently than that, wasn't it?

17 A. I believe it was more recently than the October meeting,
18 yes.

19 Q. And, in fact, isn't it true that, at some point, you had
20 the understanding that you wouldn't be required to come here
21 and testify?

22 A. Yes, that is correct.

23 Q. And is it your understanding that the government had
24 decided they weren't going to call you as a witness; so you
25 didn't need to come?

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Cozzetto - Cross

1 A. Yes.

2 Q. And then, quite recently, you learned that they did want
3 you to come, correct?

4 A. Yes.

5 Q. Now, you were asked on direct examination whether you had
6 any memory of Mr. Patterson leaving the March meeting,
7 March 2018 meeting early. Do you recall that testimony?

8 A. Yes, I do.

9 Q. And I believe you said that you had no recollection of him
10 leaving the meeting early; is that right?

11 A. I don't remember if he left the meeting early or not.

12 Q. And I believe you said that the person that you recalled
13 doing the talking at the meeting was Mr. Akhavan, correct?

14 A. Yes.

15 Q. And you don't recall anybody else that did the talking at
16 that meeting; isn't that correct?

17 A. There were some questions during the meeting from some of
18 the dispensaries, during the Q and A session, but I don't
19 recall anyone else taking a lead in that meeting, no.

20 Q. Taking a lead or speaking in any way; is that fair?

21 A. I'm sorry, could you repeat that?

22 Q. Other than Mr. Akhavan and the people at the dispensary,
23 you don't have a recollection, as you sit here now, of anybody
24 else addressing the meeting?

25 A. No. Jim may have said something, too, but no, outside of

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Cozzetto - Cross

1 people I knew prior to going to that meeting, I don't have a
2 recollection, outside of Ray speaking.

3 Q. Now, was it your -- it was your understanding that after
4 the meeting, someone would be in contact with you about the
5 Eaze processing; is that correct?

6 A. Yes.

7 Q. I believe you said you thought someone would contact you
8 about opening up accounts?

9 A. Yes, someone would -- my understanding was someone would
10 contact me with the credit card applications to send to the
11 dispensaries.

12 Q. And a few weeks after that meeting, you were contacted by
13 somebody, correct?

14 A. Yes, I was.

15 Q. You were contacted by an e-mail, correct?

16 A. Yes.

17 Q. And that was an e-mail that came from Andreas at EUP
18 Processing; is that correct?

19 A. Yes.

20 Q. If you could show --

21 MS. DEININGER: Objection. Misleading. Move to
22 strike.

23 THE COURT: Overruled.

24 Q. If we could show the witness only, please, Government
25 Exhibit 443.

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Cozzetto - Cross

1 Ms. Cozzetto, I'm going to ask you to look at the
2 document that's on your screen. I think we can probably start
3 from the second page. From the bottom. Thank you very much.

4 Do you recognize -- Well, take your time. But my
5 question is just whether you recognize this document?

6 A. Yes, I do.

7 Q. And what is it?

8 A. This is the e-mail that I received from Andreas initially
9 with the applications, the blank applications.

10 Q. And it's dated April 3rd of 2018?

11 A. Yes.

12 MR. GILBERT: Mr. Weigand offers Government
13 Exhibit 443.

14 MS. DEININGER: No objection.

15 THE COURT: Received.

16 (Defendant's Exhibit 443 received in evidence)

17 BY MR. GILBERT:

18 Q. If you look at the e-mail on April 3rd, 2018, at 3:02, do
19 you see that it says from Andreas EUprocessing, with the e-mail
20 address EUprocessing@ProtonMail.com?

21 A. Yes, I see that.

22 Q. And it's addressed to you?

23 A. Yes.

24 Q. And a little bit further down, the introduction, it says:
25 "Dear, Darcy. It is a pleasure to emeet you. Please find

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Cozzetto - Cross

1 attached the merchant application for our EUprocessing
2 solution." Do you see that?

3 A. Yes, I do.

4 Q. And it goes on to discuss what would be needed to complete
5 an application; is that correct?

6 A. Yes.

7 Q. And so it was your understanding, as of April 3rd, 2018,
8 that it was Andreas at EUprocessing who had reached out to you
9 as a follow up to the meeting; is that correct?

10 A. Yes, that is correct.

11 Q. And if we could look at the first page of the exhibit. Do
12 you see the e-mail that's dated April 3rd at 6:42 p.m. that you
13 appear to have written? I'm sorry, did you see that part?

14 A. Oh, yes. I'm sorry, I do.

15 Q. And who did you send this e-mail to?

16 A. I sent this e-mail to the dispensary ownership.

17 Q. The recipients there in the "cc" line are people all
18 associated with dispensaries; is that correct?

19 A. Yes, that's correct.

20 Q. And you go on to ask them to fill out the company
21 information, and you note that they are going to be the
22 merchants of record. Do you see that in the second paragraph?

23 A. Yes.

24 Q. And then at the end of that paragraph you write "please
25 fill this out accurately and as completely as possible"?

L3HPWEI5

Cozzetto - Cross

1 A. Yes.

2 Q. Do you see that? Now, we can take it down. Thank you.

3 After this e-mail, you had further communications with
4 Andreas at EUprocessing, correct?

5 A. Yes, I did.

6 Q. If we could show the witness only Weigand Exhibit 119,
7 please.

8 Do you recognize Weigand Exhibit 119 that's on the
9 screen in front of you now, Ms. Cozzetto?

10 A. Yes, I do.

11 Q. And what is it?

12 A. This is an e-mail exchange between myself and Andreas when
13 I worked at Eaze.

14 Q. What is the date?

15 A. The date is April 12th of 2018, and then I forwarded the
16 e-mail April 13th of 2018.

17 MR. GILBERT: We offer Weigand Exhibit 119.

18 MS. DEININGER: Objection. Hearsay.

19 MR. GILBERT: It's not for the truth, your Honor.
20 It's for the witness' state of mind as to whom she's
21 communicating with, which the government has put in issue in
22 this case.

23 THE COURT: I'm sorry, which portion? You want to
24 offer all of this?

25 MR. GILBERT: I'm sorry, your Honor. I can't hear

L3HPWEI5

Cozzetto - Cross

1 you.

2 THE COURT: You want to offer all of this?

3 MR. GILBERT: Yes, your Honor.

4 THE COURT: Let me see the bottom. I can't see it.

5 Let me see now the top portion. I don't see how the top
6 portion comes in for state of mind, and if you want the bottom
7 portion, you may have it, but that --

8 MR. GILBERT: That's fine, your Honor. We have a
9 redacted version of the document.

10 THE COURT: The redacted, and just the portion from
11 the witness will be received.

12 (Defendant's Exhibit WX119 received in evidence)

13 MS. DEININGER: Objection.

14 THE COURT: Objection to what?

15 MS. DEININGER: The unredacted portion at the top.

16 THE COURT: Oh. Yes, it should be only what's on the
17 screen now. That's all that's being received.

18 MR. GILBERT: We'll prepare a redacted version for the
19 jury to that effect. Thank you, your Honor.

20 BY MR. GILBERT:

21 Q. Ms. Cozzetto, you see what's on your screen now?

22 A. Yes, I do.

23 Q. And this is an e-mail from April 12th of 2018?

24 A. Yes.

25 Q. And to whom are you communicating here?

L3HPWEI5

Cozzetto - Cross

1 A. I'm sending an e-mail to Andreas.

2 Q. And what is the subject?

3 A. The subject?

4 Q. What are you talking to him about?

5 A. Oh, I'm sorry. I am asking him for an update on the
6 applications being complete.

7 Q. Thank you. You can take that down, please.

8 If we could please show the witness only the redacted
9 version of WX102.

10 Ms. Cozzetto, do you recognize the document on your
11 screen now?

12 A. Yes, I do.

13 Q. What is that?

14 A. This is an e-mail exchange between myself and Andreas when
15 I worked at Eaze.

16 Q. What is the date?

17 A. The date is May 16th of 2018.

18 Q. And it concerns the Eaze processing; is that correct?

19 A. Yes, it does.

20 MR. GILBERT: We offer the redacted version of WX102.

21 MS. DEININGER: No objection.

22 THE COURT: Received.

23 (Defendant's Exhibit WX102 received in evidence)

24 BY MR. GILBERT:

25 Q. If you could show the witness only please the redacted

L3HPWEI5

Cozzetto - Cross

1 version of WX103. Let's look at, I'm sorry, the top of the
2 redacted page, the first page.

3 Do you recognize WX103? I realize that some of the
4 material isn't visible to you, but from the top, can you tell
5 me what this is?

6 A. It looks like that this is an e-mail from Mick Frederick to
7 EUprocessing on June 12th of 2018.

8 Q. And moving to the second page, do you see a portion of this
9 e-mail at the top that's June 11th of 2018 at 6:18 p.m.?

10 A. Yes, I see that.

11 Q. Okay. And that's an e-mail from you to Andreas; is that
12 correct?

13 A. Yes, it is.

14 Q. And it concerns the Eaze processing?

15 A. Yes, it concerns EUprocessing.

16 MR. GILBERT: We offer the redacted version of WX103.

17 MS. DEININGER: No objection.

18 THE COURT: Received.

19 (Defendant's Exhibit WX103 received in evidence)

20 MR. GILBERT: Please show the witness only WX107 in
21 redacted form. There should be a redacted version.

22 BY MR. GILBERT:

23 Q. Let me direct your attention to the bottom portion. Thank
24 you. Do you recognize Government Exhibit -- I'm sorry, Weigand
25 Exhibit 107?

L3HPWEI5

Cozzetto - Cross

1 A. Yes, this is an e-mail that I wrote while I worked at Eaze.

2 Q. And does it concern the Eaze processing?

3 A. Yes, it does.

4 Q. And to whom did you write this e-mail?

5 A. I wrote this e-mail to Andreas.

6 MR. GILBERT: We offer WX107 in its redacted form.

7 MS. DEININGER: No objection.

8 THE COURT: Received.

9 (Defendant's Exhibit WX107 received in evidence)

10 BY MR. GILBERT:

11 Q. I'm going to show you one more of these, Ms. Cozzetto.

12 If we can get the redacted version, please, of WX111.

13 Do you recognize this document, Ms. Cozzetto?

14 A. Yes. This is an e-mail that I wrote while I was at Eaze.

15 Q. And it concerns EU Processing?

16 A. Yes, it does.

17 Q. And what is the date of it?

18 A. The date is July 30th, 2018.

19 Q. And do you see up on the second page of this exhibit on
20 July 30th of 2018, does that appear to be an e-mail that you
21 wrote at 11:56 a.m.?

22 A. I'm sorry, can you repeat the last part of that?

23 Q. I'm sorry. On the second page of the exhibit, do you see
24 an e-mail on July 30th of 2018 at 11:56 a.m. that you appear to
25 have written?

L3HPWEI5

Cozzetto - Cross

1 A. Yes, I do.

2 Q. And who did you address that e-mail to?

3 A. To Andreas and Marty.

4 Q. And what is your understanding of who Marty was in this
5 e-mail?

6 A. I don't recall who Marty was.

7 Q. Andreas is the same person that you've been testifying
8 about today --

9 A. I'm sorry, can you repeat that one again?

10 Q. I'm sorry. Andreas is the same person you've been
11 testifying about today?

12 A. Yes. I believe so, yes.

13 Q. Can we please bring up Government Exhibit 303.

14 Do you recognize this Telegram chat that's entitled
15 "Heads of depots," Ms. Cozzetto?

16 A. Yes, I do.

17 Q. This is a document that the government asked you about on
18 your direct examination?

19 A. Yes, it was.

20 Q. I'm going to turn your attention to the second page, which
21 had an entry that appears to be a communication on July 3rd of
22 2018 at 9:13 from you; do you see that?

23 A. Yes, I do.

24 Q. And you say here: "Good morning" -- well, just remind us,
25 please, who was participating in this chat, to your

L3HPWEI5

Cozzetto - Cross

1 recollection?

2 A. Who was on this chat?

3 Q. Yes.

4 A. This was a chat that I started with the heads of the
5 dispensaries that Eaze worked with, is my recollection.

6 Q. And do you see in this exchange you write: "Good morning,
7 everyone. I've got the statements for June 3rd through
8 June 12th. Andreas also confirmed that the shorter statements
9 last week were due to the bank adapting the billing period;" do
10 you see that?

11 A. Yes.

12 Q. And you were also referring to Andreas at
13 EUprocessing@ProtonMail?

14 A. Yes.

15 Q. And a little further down, on July 29th at 12:26:23, do you
16 see it says "Darcy Cozzetto: I just asked Andreas;" do you see
17 that section?

18 A. Yes, I do.

19 Q. And this, too, is in connection with your work on Eaze
20 processing and, again, you're referring to Andreas at
21 EUprocessing, correct?

22 A. Yes.

23 Q. And a little bit further down on the same page, on
24 July 9th, 2018, at 14:20:43, do you see there's a communication
25 here from you that says "Hey, guys;" do you see that?

L3HPWEI5

Cozzetto - Cross

1 A. Yes, I do.

2 Q. And the next sentence says "I've already hit up Andreas and
3 Ray to get an answer on this, as well as the timing for the
4 wire next week"?

5 A. Yes.

6 Q. And this, again, is a reference to the same individual
7 Andreas at EUprocessing, correct?

8 A. Yes.

9 Q. And on the next page, on July 13th at 2018 at 7:59 there's
10 a communication from you as well; do you see that? At the
11 bottom of the page that says: "What Ray told me was that the
12 wire was initiated Wednesday"?

13 A. Yes, I see that.

14 Q. And you go on to say: "You can ask Andreas. I'm happy to
15 put you in touch with him if you don't have his information."
16 Do you see that?

17 A. Yes, I do.

18 Q. And do you recall who it was that you were going to put in
19 touch with Andreas?

20 A. Can you take the zoom-out away so I can read earlier?

21 That comment, I think, was directed towards Justin
22 because he was asking about details on the amounts that he
23 should expect to receive, and then his confirmation that there
24 had been no wire that had been received.

25 Q. And Justin is one of the dispensary individuals?

L3HPWEI5

Cozzetto - Cross

1 A. Yes. Justin worked for Natoma dispensary.

2 Q. Do you recall whether you, in fact, put Justin in touch
3 with Andreas?

4 A. Do I recall if I put Justin in touch with Andreas?

5 Q. Yes.

6 A. I do not recall if I did or not.

7 Q. And if you go to July 18th at 13:32, do you see that
8 communication? It says "Darcy Cozzetto" and it goes on to say:
9 "I'll let Ray, Andreas know"?

10 A. Yes, I do see that.

11 Q. And again, you're indicating to the dispensary individuals
12 that you would communicate with Andreas about the subject
13 matter of the processing that you're working on, correct?

14 A. Yes.

15 Q. You were asked a few questions on direct examination about
16 an e-mail from a Frenchy, F-r-e-n-c-h-y-e-s-q, do you recall
17 that?

18 A. Yes, I do.

19 Q. Do you know who that is?

20 A. No, I don't.

21 Q. You have no idea who Frenchyesq is a reference to in those
22 communications, right?

23 A. I don't know.

24 MR. GILBERT: Can I have one moment, your Honor?

25 THE COURT: Yes.

L3HPWEI5

Cozzetto - Redirect

1 MR. GILBERT: Thank you.

2 (Pause)

3 Thank you, Ms. Cozzetto. I have no further questions
4 at this time.

5 THE COURT: Redirect.

6 REDIRECT EXAMINATION

7 BY MS. DEININGER:

8 Q. Good afternoon, Ms. Cozzetto.

9 A. Hello.

10 Q. Now, you were asked on cross-examination about who was the
11 driver of getting credit cards up at Eaze; do you recall that?

12 A. Yes.

13 MR. GILBERT: Objection. Vague.

14 THE COURT: Overruled.

15 Q. I think you said that, at Eaze, that was Jim Patterson; is
16 that right?

17 A. Yes, that's my recollection.

18 Q. To your recollection, who was primarily responsible for
19 getting Eaze a credit card solution outside of Eaze?

20 A. For the EUP solution? My understanding was Ray was our
21 main point of contact.

22 Q. And did you have an understanding of who the primary person
23 responsible for the solution was prior to EUprocessing?

24 MR. TAYBACK: Objection. Foundation.

25 MR. GILBERT: Objection. Outside the scope.

L3HPWEI5

Cozzetto - Redirect

1 THE COURT: Lay a foundation.

2 Q. I think I believe you said that on direct that you first
3 became involved in credit card processing for Eaze around
4 January or February of 2018; is that right?

5 A. Yes.

6 Q. And you testified on direct that you got involved in trying
7 to help collect some reserves from a credit card solution that
8 had stopped working; is that correct?

9 A. Yes.

10 Q. So what was your understanding of who was primarily
11 responsible for that first credit card solution that had just
12 stopped operating?

13 A. My understanding was that Ray was responsible for that one
14 as well.

15 Q. Now, sitting here today, you have no recollection of ever
16 meeting a person named Ruben, right?

17 A. Correct.

18 Q. And you have no recollection of ever having had any
19 conversations with a person named Ruben, right?

20 A. Correct.

21 Q. I'd like to have Mr. Levine pull up what's in evidence as
22 Government Exhibit 302. And, Ms. Cozzetto, do you recognize
23 this?

24 A. Yes.

25 Q. You're a participant in this Telegram conversation,

L3HPWEI5

Cozzetto - Redirect

1 correct?

2 A. Yes.

3 Q. Mr. Levine, can you go to page 50.

4 Ms. Cozzetto, do you see up at the top where it says:

5 "Ray Akhavan, I've added Martin and Ruben"?

6 A. Yes, I do.

7 Q. And do you see down below there where it says "RA at

8 10:52"?

9 A. Yes.

10 Q. Can you read the messages directly below that?

11 A. Yes. "Martin and Ruben have agreed to be actively involved
12 with helping us out. Martin is handling all reporting and
13 reconciliation, and Ruben is interfacing with the banks."

14 Do you want me to stop?

15 Q. Nope. One more line.

16 A. "You all met Ruben in LA, and Martin will be out soon
17 hopefully as well."

18 Q. And if you look at the next page, do you see that message
19 at 10:57, the second from the top?

20 A. Yes.

21 Q. One below that, Mr. Levine.

22 Do you see who that appears to be from?

23 A. Yes, it appears to be from Ruben W.

24 Q. Now, you were asked on cross some questions about your
25 meetings with the government and what you talked about, right?

L3HPWEI5

Cozzetto - Redirect

1 A. Yes.

2 Q. Generally, did you tell the government anything you wanted,
3 or did you ask the questions -- did you answer the questions we
4 asked?

5 A. I generally answered the questions that I was asked.

6 Q. And do you have any idea what other evidence has been
7 introduced in this trial, other than your own testimony?

8 A. No.

9 Q. Your first meeting with the government was in October 2020;
10 is that right?

11 A. Yes.

12 Q. Did you tell the government at that time that Ray Akhavan
13 had two or three associates in the room at the March 2018
14 Calabasas meeting?

15 A. I don't remember how many I said, but I do remember I said
16 he had associates there.

17 Q. Mr. Levine, if we can pull up just for the witness 3507,
18 page 3 -- on page 6 of this document, just for the witness.

19 And, Ms. Cozzetto, I want to focus your attention on
20 the second paragraph from the top and just read it to yourself.
21 Let me know when you're done.

22 A. I'm done.

23 Q. Mr. Levine, you can take it down.

24 Ms. Cozzetto, does that refresh your recollection that
25 in October of 2020, you told the government that Ray Akhavan

L3HPWEI5

Cozzetto - Redirect

1 had two or three associates in the room at the March 2018
2 Calabasas meeting?

3 A. Yes, it does.

4 Q. And did you also tell the government at that time the name
5 Ruben rang a bell?

6 A. Yes, I did.

7 Q. And how do you recall -- and do you recall Ray mentioning
8 Ruben, generally?

9 A. Yes. I don't remember if he mentioned at the Calabasas
10 meeting or not.

11 Q. And what is your recollection of what Ray said about Ruben?

12 A. My first memory of hearing about Ruben was -- what I
13 remember is I was supposed to be interfacing with Ruben to set
14 up the process. I believe I reached out a few times and didn't
15 get a response; so I asked Ray for help, and then he became my
16 main point of contact.

17 Q. And you also -- you do recall meeting an associate of Ray's
18 at the March 2018 Calabasas meeting; is that right?

19 A. Yes, that's right.

20 Q. And I think you described that person as being a man,
21 right?

22 A. Yes.

23 Q. In his 30s or 40s?

24 A. Yes.

25 Q. With, I think you said, a bit of a square head?

L3HPWEI5

Cozzetto - Redirect

1 A. Yes.

2 Q. And that you believed he was German based on his accent?

3 A. Yes.

4 Q. And I don't know that you mentioned this before, but do you
5 remember his hair color?

6 A. Brown or blond -- brownish-blond maybe.

7 Q. Okay. Switching topics for a second. You were asked on
8 cross-examination about another card processing solution that
9 Eaze used for a business CardConnect; do you remember that?

10 A. Yes.

11 Q. Was Eaze -- other than the solutions that Eaze worked on
12 with Ray, was Eaze ever able to keep a credit card solution up
13 and running for any period of time?

14 A. Not that I knew of, no.

15 Q. And the funds that went through CardConnect, those were
16 ultimately frozen, weren't they?

17 A. Yes, they were.

18 Q. So I think you testified on both direct and cross that
19 throughout the time period you worked at Eaze, you believed the
20 person writing to you from EUprocessing@ProtonMail.com was
21 named Andreas, right?

22 A. Yes.

23 Q. But you never met Andreas in person, right?

24 A. Correct.

25 MR. GILBERT: Objection. Asked and answered.

L3HPWEI5

Cozzetto - Redirect

1 THE COURT: Overruled.

2 Q. You never talked to Andreas on the phone, right?

3 MR. GILBERT: Objection. Asked and answered.

4 THE COURT: Overruled.

5 A. Correct. I did not talk to him on the phone.

6 Q. You never even learned a last name for Andreas, right?

7 A. Correct.

8 Q. Did you ever get a phone number for Andreas?

9 A. I don't believe so, no.

10 Q. Did you ever visit an EUprocessing office?

11 A. No, I did not.

12 Q. Did you ever learn of whether they had an office?

13 A. No, I don't believe I did.

14 Q. Did you ever meet anyone who worked at EUprocessing?

15 A. I don't believe so.

16 Q. Did you ever talk to anyone who worked at EUprocessing?

17 A. Outside of the e-mails, no, not that I recall.

18 Q. Did you ever see a website for EUprocessing?

19 A. No, not that I recall.

20 Q. Did you ever have a phone number for anyone at

21 EUprocessing?

22 A. No, not that I recall.

23 Q. And based on your experience, is it normal business

24 practice not to have a phone number for a business partner?

25 A. No, it is not.

L3HPWEI5

Cozzetto - Redirect

1 Q. I'd like to pull up what's in evidence as Government
2 Exhibit 443, and you were asked about this document on
3 cross-examination. Do you remember that, Ms. Cozzetto?

4 A. Yes.

5 Q. So if we go to the e-mail at the bottom of the chain, which
6 is the first e-mail in time, April 3rd, 2018. The top of the
7 e-mail says "Dear Darcy, it is a pleasure to emeet you." Do
8 you see that?

9 A. Yes.

10 Q. Is this the first e-mail that you received from the e-mail
11 EUprocessing@ProtonMail.com?

12 A. I don't remember exactly, but I believe it would be, yes.

13 Q. And then can we look at the signature at the bottom. What
14 does it say there?

15 A. It says "All my best, Andreas."

16 Q. So was this e-mail and the signature at the bottom of it
17 one of the reasons that you believed that someone named Andreas
18 used this e-mail?

19 A. Yes.

20 Q. Prior to this, had anyone told you that someone named
21 Andreas would be using the e-mail address
22 EUprocessing@ProtonMail.com?

23 A. No, I don't believe so.

24 Q. Other than the names written at the bottom of e-mails, did
25 you have any reason to believe it was actually someone named

L3HPWEI5

Cozzetto - Redirect

1 Andreas that you were communicating with?

2 A. No. I believe there was somebody named Andreas from the
3 e-mails.

4 Q. So if we go up to the top of this document, you were asked
5 some questions on cross-examination about, I believe,
6 instructions that Ray Akhavan had given during the March 2018
7 Calabasas meeting. Do you remember that?

8 A. Yes.

9 Q. And how he had instructed that the dispensaries should
10 truthfully complete the bank accounts, right?

11 A. Yes.

12 Q. And you write here in this document: "Please fill this out
13 as accurately and completely as possible," right?

14 A. Yes.

15 Q. And you're writing to the -- your primary audience is the
16 dispensary heads there; is that right?

17 A. Yes.

18 Q. Now, why are you giving them this instruction?

19 A. I am giving them this instruction because I was reminding
20 them, based on the conversation we had at the meeting, fill out
21 the applications as accurately as possible.

22 Q. And again, what did Ray say at the meeting about why it was
23 so important to fill out the applications as accurately as
24 possible?

25 MR. TAYBACK: Objection. Asked and answered. Beyond

L3HPWEI5

Cozzetto - Recross

1 the scope.

2 MS. DEININGER: Your Honor, she was asked about this
3 particular statement on cross-examination.

4 THE COURT: I'll allow it. You may answer.

5 A. Okay. I'm sorry, can you repeat the question?

6 Q. Yes. The question was just, what did Ray say about why it
7 was so important for the dispensaries to be filling out the
8 applications as accurately as possible?

9 A. It was important because that kept the dispensary owners'
10 level of risk to be pretty low. They were being as truthful as
11 possible.

12 Q. And what did you understand the risk at issue to be there?

13 A. My understanding it was --

14 MR. TAYBACK: Objection. Asked and answered.

15 THE COURT: Overruled.

16 Q. You can answer.

17 A. My understanding was the risk of getting caught.

18 MS. DEININGER: No further questions.

19 THE COURT: All right. Anything else?

20 MR. TAYBACK: Yes, your Honor.

21 RECROSS EXAMINATION

22 BY MR. TAYBACK:

23 Q. Ms. Cozzetto, can you hear me?

24 A. Yes, I can. Thank you.

25 Q. A consequence of, quote, unquote, getting caught would be

L3HPWEI5

Cozzetto - Recross

1 that monies that were being held by the bank, the acquiring
2 bank, would be frozen, correct?

3 A. Yes.

4 Q. And, in fact, that's actually something you experienced
5 when Eaze was doing business with CardConnect, correct?

6 A. Yes.

7 Q. And, in fact, when that happened -- back up.

8 And again, Mr. Akhavan was not part of any
9 relationship that Eaze had with CardConnect for the processing
10 of credit cards, correct?

11 A. No.

12 MS. DEININGER: Objection. Foundation.

13 THE COURT: Sustained.

14 Q. You did not go through Mr. Akhavan to introduce Eaze to
15 CardConnect, correct?

16 A. I personally did not, no.

17 Q. Do you know whether anybody did?

18 A. I don't know.

19 Q. And CardConnect, in fact -- if I could ask you to take a
20 look at 302, which the government just showed you. If you look
21 at the first page, this is the longer chat called Easycompany
22 chat; do you see that?

23 A. Yes, I do.

24 Q. And the date on the very top of the first page is
25 April 27th, 2018?

L3HPWEI5

Cozzetto - Recross

1 A. Yes.

2 Q. And that's when the chat starts, but the chat extends for
3 many months, correct?

4 A. Yes, I believe so.

5 Q. If I could ask Mr. McLeod to turn to page 14. It ends in
6 Bates stamp number 2195. If I could ask you to go back to the
7 Bates stamp ending in 2190.

8 And if you look in the middle of the page, Mr. Akhavan
9 asks: "What's the other solution exactly? That's great news."
10 And if you go down to the next two responses, you'll see one
11 from Mr. Patterson that says: "I believe the new one is called
12 CardConnect. Daniel, is that right?" Do you see that?

13 A. Yes, I do.

14 Q. If I could ask Mr. McLeod to go to the Bates stamp number
15 ending in 2195.

16 And if you look at the top of that page, it gives a
17 new date. By then, at least, it's a conversation in June of
18 2018; is that correct?

19 A. Yes.

20 Q. And if you go down, you'll see a statement attributed to
21 Mr. Akhavan in the middle of the page that says: Cuz the zero
22 reserve is really sweet. I wish I could do the same for you
23 guys. My problem is all the banks I deal with, I do a lot of
24 business with, and I can't lie to them; so I can't get low-risk
25 rates. Do you see that?

L3HPWEI5

Cozzetto - Recross

1 A. Yes, I do.

2 Q. You can take that down for the time being.

3 When you did business with CardConnect, they required
4 a reserve to be held, correct?

5 A. I believe so. I wasn't as familiar with that process.

6 Q. And that was the money, ultimately, that was frozen,
7 correct?

8 A. I believe it was the -- I believe it was the reserve and
9 also some -- potentially, some weekly wires from CardConnect
10 that were frozen.

11 Q. And was it your understanding that the difference between
12 Eaze's relationship with CardConnect and Eaze's relationship
13 with Mr. Akhavan, is that the banks with Mr. Akhavan was
14 dealing with knew that they were processing marijuana?

15 A. I --

16 MS. DEININGER: Objection. Foundation.

17 MR. TAYBACK: I'm just asking for her understanding.

18 THE COURT: Sustained.

19 Q. Did you seek Mr. Akhavan's help in trying to get the
20 reserves released from CardConnect?

21 A. I did not, no.

22 Q. Do you know whether Eaze did?

23 A. I don't know whether Eaze did.

24 Q. Did the monies ever get released from CardConnect?

25 A. I don't recall.

L3HPWEI5

Cozzetto - Recross

1 Q. Did you continue to do business with CardConnect?

2 A. I don't recall, but I don't believe so.

3 Q. But you don't recall?

4 A. I don't recall.

5 MR. TAYBACK: I have no further questions, your Honor.

6 THE COURT: All right.

7 RECROSS EXAMINATION

8 BY MR. GILBERT:

9 Q. Ms. Cozzetto, when you met with the government in October
10 of 2019 and you were asked about any associates of

11 Mr. Akhavan's at the meeting, you didn't tell the government in
12 October of 2019 that anybody had a German accent, did you?

13 A. In October of 2020? I don't recall.

14 Q. You don't recall. And isn't it true, Ms. Cozzetto, that
15 from April of 2018 to September of 2018, you were in regular
16 communication with EUprocessing as part of your job, right?

17 A. April 2018 through September is? Yes, that's correct.

18 Q. It was an important part of what you were doing for Eaze,
19 correct?

20 A. It was a part of what I did for Eaze, yes.

21 Q. And you were focused on that work, to some extent, for many
22 months, correct?

23 A. It was part of my job for many months, yes.

24 Q. As part of your job for those many months, you had regular
25 communications, like many of them that we've seen, with

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Cozzetto - Recross

1 EUprocessing, correct?

2 A. Yes.

3 Q. And in 2018, while you were having those communications,
4 isn't it true that it never occurred to you for one second that
5 Andreas was anybody other than Andreas?

6 A. That is correct.

7 Q. And, in fact, the only time that's ever come into your mind
8 was when it was suggested to you by the government?

9 MS. DEININGER: Objection.

10 Q. Is that....

11 THE COURT: Overruled. You may answer.

12 A. I still believe that I was talking to somebody named
13 Andreas.

14 MR. GILBERT: Thank you very much, Ms. Cozzetto.

15 THE COURT: Anything further?

16 MS. DEININGER: No further questions.

17 THE COURT: Thank you very much. You may step down.

18 (Witness excused)

19 Please call your next witness.

20 MS. DEININGER: The government calls Michael
21 Steinbach.

22 THE COURT: Remain standing but take your mask.
23 Please raise your right hand.

24
25 MICHAEL STEINBACH,

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Steinbach - Direct

1 called as a witness by the Government,

2 having been duly sworn, testified as follows:

3 THE COURT: Please be seated. State and spell your
4 full name.

5 THE WITNESS: Michael Steinbach, M-i-c-h-a-e-l,
6 S-t-e-i-n-b-a-c-h.

7 THE COURT: Counsel.

8 DIRECT EXAMINATION

9 BY MS. DEININGER:

10 Q. Good afternoon, Mr. Steinbach.

11 A. Hello.

12 Q. Can you hear me okay?

13 A. I can hear you.

14 Q. Okay. Mr. Steinbach, where do you work?

15 A. I work at Citi.

16 Q. How long -- is Citi also known as Citigroup or Citibank?

17 A. It is.

18 Q. How long have you worked at Citi?

19 A. Four years.

20 Q. What is your current role there?

21 A. I'm the head of the consumer bank's fraud prevention
22 organization.

23 Q. And what is the global -- Citi's global consumer bank?

24 A. So Citi is actually two entities in general. There's an
25 institutional group, institutional clients group, which is

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Steinbach - Direct

1 commercial, industrial, trading; and then there's a consumer
2 bank, which is what we would all think of as a bank, a retail
3 bank, a global retail bank.

4 Q. And what services does the global consumer bank offer to
5 customers?

6 A. Sure. So broadly, Citi's consumer bank offers services in
7 United States, Mexico and 17 countries in Asia, Europe and the
8 Middle East in credit cards and essentially retail bank
9 services, deposit banks, checking accounts, savings accounts,
10 that type of thing.

11 Q. Okay. And what are your general responsibilities as the
12 head of global fraud prevention?

13 A. My role and my team's role is to prevent, detect and
14 mitigate fraud across the entire consumer banks, so end-to-end
15 accountability for all fraud from policy, strategy, through to
16 operations.

17 Q. And what do you mean end-to-end accountability for fraud?

18 A. So identifying and understanding the types of frauds that
19 are occurring, developing policy and strategies using analytic
20 tools to identify and stop the fraud, and then a large
21 operation staff that interfaces with customers when they
22 encounter fraud.

23 Q. And how long have you been the head of global fraud
24 prevention?

25 A. Three years, about three years.

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Steinbach - Direct

1 Q. What did you do at Citi before you became the head of
2 global fraud prevention?

3 A. I was hired my first year at Citi to build a cyber fraud
4 fusion center.

5 Q. And what does that mean? What is a cyber fraud fusion
6 center?

7 A. So Citi had a cyber security center, which is an entity
8 that was designed to prevent cyber attacks, the things you see
9 in the news, hacks, attacks to Citi's systems. But what they
10 didn't have was a fraud-specific team, and fraud, a lot of
11 times, occurs not during the hack but later on down the road.

12 You know, a customer's information is stolen from
13 either Citi, or other places, and so the fraud fusion center
14 was designed to be an intelligence-led entity to go after fraud
15 well after the cyber event occurs.

16 Q. And what did you do before joining Citi?

17 A. I was with the FBI.

18 Q. How long were you with the FBI?

19 A. Twenty-two years.

20 Q. What role did you hold at the time that you retired from
21 the FBI?

22 A. I was the executive assistant director of the FBI's
23 national security branch.

24 Q. And what are some of the other roles you held during your
25 tenure at the FBI?

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Steinbach - Direct

1 A. Prior to the head of the national security branch, I was
2 the head of counterterrorism, responsible for domestic and
3 international terrorism. Prior to that, I held roles as the
4 head of the office of the Miami division of the FBI, and
5 separately, the Jacksonville, Florida division of the FBI. I
6 served overseas at Israel, Afghanistan, India, quite a few
7 places. My first job was working criminal matters in Chicago.

8 Q. Going back to Citi for a minute, where is Citi
9 headquartered?

10 A. Here in New York City.

11 Q. Are you familiar with the Federal Deposit Insurance
12 Corporation?

13 A. I am.

14 Q. Are any components of Citi insured -- is that also known as
15 the FDIC?

16 A. It is.

17 Q. And are any components of Citi insured by the FDIC?

18 A. Yes, consumer retail bank accounts.

19 Q. And what does it mean to be insured by the FDIC?

20 A. The FDIC insures against loss up to a certain dollar amount
21 for retail deposit accounts.

22 Q. So I think you touched on this a minute ago, but does Citi
23 issue credit cards to consumers?

24 A. They do.

25 Q. And does it also issue debit cards?

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Steinbach - Direct

1 A. They do.

2 Q. And so with respect to those cards, is Citi what is
3 referred to as an issuing bank?

4 A. Citi is, in general, an issuing bank, yes.

5 Q. During the 2016 to 2019 time period, what payment systems
6 did Citi use in connection with its cards?

7 A. Primarily MasterCard and Visa.

8 Q. And what role do those payment systems play in Citi's
9 ability to offer cards to its customers?

10 A. So you can think of the Visa and MasterCard as kind of the
11 highway that the payment process goes through.

12 Q. How would it impact Citi business if it wasn't able to
13 participate in MasterCard and Visa's payment system?

14 A. We would not be able to have a credit card business and
15 make any money.

16 Q. And is the card business a significant portion of Citi's
17 revenue?

18 A. In the global consumer bank, it's the majority of our
19 revenue, yes.

20 Q. In your role as the head of global fraud prevention, are
21 you familiar with Visa and MasterCard's rules for their payment
22 system?

23 A. In general, yes.

24 Q. Are those rules relevant to Citi's card business?

25 A. They are.

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Steinbach - Direct

1 Q. How?

2 A. So we have to abide by the rules that the association on
3 the networks, Visa and MasterCard, they set the ground rules
4 for which issuing banks, like Citi, and merchants and acquiring
5 banks can operate.

6 Q. In the 2016 to 2019 time period, did Visa and MasterCard
7 have rules or policies regarding illegal transactions?

8 A. They did.

9 Q. And generally, what did their rules say regarding illegal
10 transactions?

11 A. Illegal transactions were not allowed on either payment
12 platforms.

13 Q. Did those rules or policies allow for a marijuana
14 transaction?

15 A. They did not allow for marijuana transactions.

16 Q. And why not?

17 A. Marijuana was against the law from a federal perspective
18 and so, therefore, Visa and MasterCard would not allow payments
19 for marijuana on their systems.

20 Q. So during the 2016 to 2019 time period, would Citi have
21 knowingly approved marijuana credit or debit card transactions?

22 A. No.

23 Q. During that same time period, did Citi have policies
24 regarding its willingness to conduct cannabis business?

25 A. It did.

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1 Q. I'd like to show, Mr. Levine, if you can show just for the
2 witness, what has been marked for identification as Government
3 Exhibit 2502.

4 Mr. Steinbach, do you recognize this?

5 A. I do.

6 Q. And what is it?

7 A. It's the global consumer bank AML program.

8 Q. And what does AML program mean?

9 A. AML stands for anti-money laundering. It's a program that
10 all banks have.

11 MS. DEININGER: Your Honor, the government offers
12 Government Exhibit 2502 into evidence.

13 MR. BURCK: No objection, your Honor.

14 MR. ARTAN: No objection.

15 THE COURT: Received.

16 (Government's Exhibit 2502 received in evidence)

17 BY MS. DEININGER:

18 Q. Mr. Levine, if you can publish that for everyone.

19 So, Mr. Steinbach, looking back at this document,
20 what's the date of this document?

21 A. The issue date is April 10, 2014.

22 Q. And was there a version of this global consumer banking AML
23 program in effect for the entirety of the period from 2016 to
24 2019?

25 A. There was.

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Steinbach - Direct

1 Q. Do the policies in this global consumer banking AML program
2 apply to Citi's card business?

3 A. They do.

4 Q. I want to, Mr. Levine, if you can, turn us to page 8.

5 And, Mr. Steinbach, do you see this, where it says
6 "Global AML policy"?

7 A. I do.

8 Q. Can you read that for me?

9 A. "The objective of the GAML policy is to establish governing
10 principles and minimum standards to protect Citi, its
11 subsidiaries, affiliates and/or joint ventures from being used
12 to launder money and/or finance terrorism, and to guide all
13 Citi employees as they conduct business in accordance with
14 applicable anti-money laundering and counter-terrorist
15 financing, collectively AML laws and regulations."

16 Q. You can stop there?

17 A. "City's global AML program is structured to reflect Citi's
18 AML control framework and its application to the AML life
19 cycle."

20 Q. Okay. Thank you. That's perfect. So at the beginning of
21 this, it mentions that this is -- this is describing the
22 objectives that GAML policy. Does that stand for global AML
23 policy?

24 A. It does.

25 Q. And it says that those are -- the objective is to establish

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Steinbach - Direct

1 governing principles and minimum standards to protect Citi from
2 being used to launder money and/or finance terrorism; is that
3 right?

4 A. That's correct.

5 Q. And do these same objectives also apply to the global
6 consumer banking AML program?

7 A. They do.

8 Q. So in here, there's a reference to laundering money.
9 Generally, what does that mean? What is laundering money?

10 A. It's when you hide the origin of money that was obtained
11 illegally.

12 Q. And can you provide an example of money that might be
13 obtained illegally that someone might seek to launder?

14 A. A very general example would be a drug dealing, where the
15 proceeds were in cash, and you took those proceeds and took
16 them to a business, say a car wash, and the car wash then
17 deposited them as if they were legitimate funds from a car wash
18 versus from the drug dealing.

19 Q. Mr. Levine, can we now turn to page 19. Mr. Steinbach, do
20 you see section 5.2, where it states "GCB prohibited customers
21 and/or accounts"?

22 A. I do.

23 Q. Can you read the top paragraph under that for me, up to the
24 colon?

25 A. "Unless otherwise granted a customer-specific exception in

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1 accordance with Citi policy, or GCB procedures, GCB businesses
2 are prohibited from opening accounts for, or establishing
3 relationships with, any of the inherently high-risk or
4 statutorily prohibited client or account types listed below."

5 Q. And then, Mr. Levine, if you can scroll so that we can see
6 item No. 12 on that list.

7 Mr. Steinbach, what does item No. 12 say?

8 A. "Marijuana providers and distributors."

9 Q. To your knowledge, were there any -- was there a version of
10 this rule in place for the entirety of the 2016 to 2019 time
11 period?

12 A. There was, yes.

13 Q. And were there any material changes to this rule during
14 that time period?

15 A. There were not.

16 Q. Can you explain why Citi generally prohibits its businesses
17 from engaging in business with marijuana providers and
18 distributors?

19 A. So Citi follows all applicable laws, state and federal, and
20 since marijuana is against the law from a federal perspective,
21 Citi has a policy that it's not to do business with marijuana.

22 Q. Are there risks that Citi is seeking to minimize by having
23 this policy?

24 A. Sure. In general, Citi, as a consumer bank, has a
25 reputational risk, a regulatory risk and also a legal risk they

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1 worry about.

2 Q. And what do you mean by a regulatory risk there?

3 A. So Citi, as one of the largest banks, is fairly heavily
4 regulated by a number of U.S. regulatory agencies, the OCC,
5 Federal Reserve Bank. And so they govern the actions and
6 policies and procedures that Citi follows.

7 Q. And you also mentioned legal risk, what did you mean by
8 that?

9 A. So we are concerned, from a federal perspective, that we
10 are not following federal laws, and since we operate in the
11 United States and follow all applicable federal and state laws,
12 we are concerned, from a legal perspective, we'd be held liable
13 or accountable.

14 Q. And so what would Citi have done if a marijuana business
15 applied for credit cards?

16 A. We would not enter into a relationship with a business that
17 dealt with marijuana.

18 Q. And generally, is it important to Citi to receive accurate
19 information as to whether its customers are engaged in
20 marijuana business?

21 A. Yes.

22 Q. Why?

23 A. So to accurately assess the risk and to follow Citi policy
24 and to understand the business, we have to know what that
25 business is engaged in.

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Steinbach - Direct

1 MS. DEININGER: Your Honor, the government would now
2 like to offer into evidence Government's Exhibits 2512 to 2515
3 as self-authenticating business records.

4 MR. BURCK: No objection, your Honor.

5 MR. ARTAN: No objection.

6 THE COURT: Received.

7 (Government's Exhibits 2512 to 2515 received in
8 evidence)

9 BY MS. DEININGER:

10 Q. Mr. Steinbach, you mentioned before that Citi was an
11 issuing bank with regard to credit cards, right?

12 A. In general, yes, Citi is an issuing bank.

13 Q. Are there certain instances in which it also serves the
14 role as acquiring bank?

15 A. It does.

16 Q. Mr. Levine, can you publish Government Exhibit 2515 and go
17 to page 3.

18 Mr. Steinbach, what is this?

19 A. This looks to be a cardholder agreement when you apply for
20 a credit card.

21 Q. And does this apply to cards issued by Citi?

22 A. This does.

23 Q. Mr. Levine, if we can go to page 5.

24 And, Mr. Steinbach, do you see under section 2 is
25 titled "Your accounts"?

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Steinbach - Direct

1 A. Yes.

2 Q. On the right-hand side of that, there's a subsection that
3 says "Unlawful Transactions;" do you see that?

4 A. I do.

5 Q. Can you just read that for me?

6 A. "Unlawful transactions. You aren't permitted to use your
7 account for unlawful transactions. If you do use your account
8 for unlawful transactions, this agreement still applies, and
9 you must pay for those transactions. You also may have to pay
10 the card network and/or us for any damages and expenses
11 resulting from that use. In addition, we may close your
12 account."

13 Q. Thank you. So in the United States, would marijuana
14 transactions be prohibited under this rule?

15 A. They would.

16 Q. And did Citi's cardholder agreements contain this rule
17 throughout the period between 2016 and 2019?

18 A. They did.

19 Q. Let's go to page 12 now. There's a section up at the top
20 labeled "Governing Law;" do you see that?

21 A. I do.

22 Q. Can you just read that one sentence for me?

23 A. "Governing law. Federal law and the laws of South Dakota
24 govern the terms and enforcement of this agreement."

25 Q. Mr. Levine, we can put that down.

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Steinbach - Direct

1 Mr. Steinbach, in your role at Citi, are you familiar
2 with how credit card transactions are processed?

3 A. I have.

4 Q. And what is Citi's role in the card payment network?

5 A. So essentially, Citi, in general, acts as the issuing bank.
6 So we would -- and a customer would apply for a card, and we
7 would issue a card based on that individual's credit. We
8 essentially -- in the credit card relationship, we act as
9 providing a loan to those customers when they purchase or --
10 purchase goods or services.

11 Q. And when a cardholder of a Citi credit card buys something,
12 what is Citi's role with regard to that particular transaction?

13 A. Citi's role in every transaction where we are the issuing
14 bank is to approve or decline that transaction.

15 Q. How does Citi make that decision?

16 A. So broadly, when a customer or an individual goes and buys
17 a goods or a service, that information goes from the merchant,
18 through the network, to Citi. And Citi has two broad
19 categories that they review to determine whether or not to
20 approve or decline a transaction. There is a set of policy
21 rules and a set of strategy rules that in, quite frankly,
22 milliseconds the decision is made whether to approve or
23 decline.

24 Q. And so you mentioned policy rules, and I think you said
25 fraud strategy rules; is that right?

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1 A. Correct.

2 Q. What are policy rules?

3 A. So policy rules would be things like is the name the
4 correct name, is the account number or the credit card the
5 correct number and the expiration date, is the credit limit
6 sufficient to justify or allow that purchase? Things that are
7 more static and don't change, those are policies.

8 Q. And what about fraud strategy rules, what are those?

9 A. So fraud strategies are a broad set of dynamic rules that
10 change quite a bit and are varying, depending on the type of
11 purchase, the location, the channel. And they go in to
12 determine essentially one thing, whether or not it's you, the
13 customer, or a fraudster or a bad actor, who's not supposed to
14 be charging on your card.

15 Q. One of the things you mentioned there was the channel.

16 What did you mean by the channel?

17 A. So you can do it, you know, online is one channel. You
18 could be in person, over the telephone, numerous channels to
19 make a purchase.

20 Q. And you referenced that one of the purposes is to try and
21 identify whether it's a customer, the fraudster or bad actor,
22 right?

23 A. Correct.

24 (Continued on next page)

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Steinbach - Direct

Q. Would bad actors include merchants that are submitting false information in the payment system?

A. It would.

Q. So you mentioned a lot of information there. How does Citi actually process --

THE COURT: Just so I'm clear on one thing. So it would be important to Citi, in deciding whether or not to prove or disapprove the transaction, to know whether the customer was disguising some aspect of the transaction, even -- regardless of what that related to? Do I have that right?

THE WITNESS: Correct.

MS. DEININGER: Thank you, your Honor. You anticipated some of my future questions.

Q. Mr. Steinbach, I did want to ask -- you were saying that you described a bunch of information that Citi received and considered, and I wanted to -- I was hoping you could explain how Citi actually processes that information and makes the approval or the decline decision.

A. Sure. Again, from a broad strategy perspective, there is essentially what we call a decision engine, which is, usually a third party from another company gives it to us and we use it, and this decision engine takes in hundreds if not thousands of variables, different models and scores, again all in an attempt to make sure that it's, in my case, Mike Steinbach making a

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1 purchase or not Mike Steinbach. And so those all fire very
2 quickly, and the decision engine makes the ultimate decision to
3 most generally either approve the transaction or decline the
4 transaction.

5 Q. And to help reach that decision, does the decision engine
6 assign scores to different channels or transactions?

7 A. There are numerous scores that come in as a result of this
8 transactional or authorizational attempt. And based on those
9 scores, or risk levels, we set thresholds. So in some cases we
10 may have a threshold at a certain level, and in other instances
11 we may raise or lower that threshold.

12 Q. OK. So Citi has risk thresholds at which it will or will
13 not approve or decline a transaction. Right?

14 A. Correct.

15 Q. And I think you said those risk thresholds can vary
16 depending on a number of wide circumstances?

17 A. They can.

18 Q. And do they also change over time or are they static?

19 A. They're very fluid. They can change daily. And there
20 could be several risk scores all inputted into a single
21 transaction.

22 Q. Can you give me some examples of something that would lead
23 Citi to change its risk thresholds.

24 A. So for instance we may notice increased fraud in a
25 particular geographic area, a particular state, with particular

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1 type of transactions, like big-screen TVs, and that may cause
2 us to tighten the thresholds of approvals for big-screen TVs
3 within that geographic area. The rules are designed to be very
4 targeted so we don't broadly impact a larger set of customers.

5 Q. And why are you trying to avoid impacting a larger set of
6 customers? What's the concern there?

7 A. So we have three core focuses. We want to prevent fraud.
8 We want to allow for a seamless customer experience. And we
9 want to keep our operational expenses down. If we don't target
10 specifically those fraud strategies and affect a larger
11 population, of course a legitimate customer is going to be
12 impacted. Their card is going to be declined and it's going to
13 cause a not a happy experience for that customer dealing with
14 Citi.

15 Q. So I want to go back to the categories of information that
16 you said the decision engine takes into consideration. I think
17 you mentioned location. Correct?

18 A. Correct.

19 Q. And I think you mentioned channel, like whether the card is
20 present or not present?

21 A. Correct.

22 Q. Are there other primary factors that go into the decision
23 engine relating to the merchant?

24 A. Yes. There's broad categories. We get merchant
25 information, we get customer information, and information

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Steinbach - Direct

1 specific to the transaction.

2 Q. And so what are the other pieces of merchant information
3 that go into the decision?

4 A. So the networks, Visa and MasterCard, set a standard, what
5 we call level one information. We get essentially merchant
6 name, date, the amount of the purchase, and something called
7 the MCC.

8 Q. Do you also get information about -- or do you have
9 information on merchant history?

10 A. We do.

11 Q. And what is that?

12 A. How long the merchant has been in business, what they sell,
13 what their business is, so we can understand the merchant.

14 Q. And is it important to Citi for its decision process that
15 all of this information be accurate?

16 A. It is.

17 Q. Why, generally, is accuracy important?

18 A. I mean probably two, or three, again, three basic areas.
19 If we don't have accurate information, we may incur more
20 financial loss through fraud. If we don't have the correct
21 information, we may impact legitimate customers when they're
22 trying to do purchases, therefore impacting that customer's
23 experience. And then lastly, it may increase our operational
24 expenses if we have the wrong information.

25 Q. And how does this impact your operational expenses?

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1 A. So when we make a decision, or we alert on a card, that
2 customer is notified. The more we alert, say in a general
3 sense, if we alert on a lot more customers, all those customers
4 call into our center to speak to an agent. That's a person
5 they have to talk to. That's a very significant expense for
6 us, if we have to spend the time with folks on the phone.

7 Q. Do you know how much, generally, Citi spends on trying to
8 prevent fraud in its card system every year?

9 A. I do.

10 Q. How much is that?

11 A. My operating expense, the annual operating expenses for the
12 North American managed segment are somewhere in the
13 neighborhood of, for this year, about \$276 million, and about
14 \$18 million in technology investments.

15 Q. So one of the things you mentioned that Citi takes into
16 consideration is an MCC code. Is that right?

17 A. Correct.

18 Q. What is an MCC code generally?

19 A. Merchant category code. It generally identifies the
20 category of merchandise or service that's being provided.

21 Q. So is it important specifically that the MCC code received
22 for each transaction be accurate?

23 A. It is.

24 Q. And why?

25 A. Certain entities, certain categories of code are more

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1 subject to fraud. Frauds are like big-ticket items versus,
2 say, for instance, groceries. So understanding the specific
3 MCC code, or MCC, I should say, would allow us to understand if
4 we're under an attack, where it's coming from, and how to
5 mitigate it.

6 Q. Are there any MCCs for which Citi blocks all transactions?

7 A. There are a few.

8 Q. Can you give me some examples?

9 A. We block all cryptocurrency transactions, and we block
10 online gambling if it's illegal in the state in which the
11 transaction occurs.

12 Q. So you mentioned that one of the ones that -- MCCs that
13 Citi blocks is cryptocurrency transactions, right?

14 A. Correct.

15 Q. Would Citi earn fees on cryptocurrency transactions if it
16 permitted them?

17 A. They would.

18 Q. Generally what fees does -- Citi earns fees on credit card
19 transactions?

20 A. Citi, like all issuing banks, earns an interchange fee
21 somewhere in the neighborhood, I think on an average it's about
22 1.8 percent of the transaction.

23 Q. Are cryptocurrency transactions illegal?

24 A. They are not.

25 Q. So why does Citi block cryptocurrency credit transactions

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Steinbach - Direct

1 that it could be earning fees from?

2 A. So we take a risk perspective to it. We are concerned
3 that, with the volatility of cryptocurrency on a credit card
4 purchase you are essentially lending money. And at this time,
5 Citi believes that's too great of a risk. We do not block
6 debit purchases using cryptocurrency, because it's the
7 customer's money.

8 Q. So is it fair to say that, for credit transactions, Citi
9 decided that even though those transactions are legal, they
10 involve a level of riskiness that it did not want to take on?

11 A. That's exactly the reason why we don't.

12 Q. Another piece of information that you mentioned that Citi
13 receives is merchant name. Right?

14 A. Correct.

15 Q. So thinking just about the merchant name, is it important
16 that merchant name be accurate?

17 A. It is.

18 Q. And why is the accuracy of the merchant name important?

19 A. So, again, as we attempt to stop or block fraud, sometimes
20 there are attacks specific to a type of merchant. There
21 perhaps may be a problem with that particular merchant, and a
22 fraudster is a bad actor taking advantage of it. So we need to
23 know, from a fraud perspective, who the merchant is.

24 Q. Can the merchant name also be important on the back end
25 after an approval or decision is made?

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1 A. It is.

2 Q. And how so? Why would it be important at that time?

3 A. The way the associations or networks work is, if a fraud
4 occurs, the liability could be with the bank, such as Citi, but
5 it could also be with the merchant. So we would, in certain
6 cases, charge back the fraudulent purchase to the merchant.

7 Q. Would Citi also need to know the merchant name if it was
8 going to conduct any investigation into potential fraudulent
9 activity?

10 A. They would.

11 Q. You also mentioned location information. That goes into
12 the decision engine too. Correct?

13 A. It does.

14 Q. And what does location information generally reflect?

15 A. So it reflects essentially two scenarios: where the
16 merchant is located, but also where the cardholder is
17 conducting that transaction. Say, for instance, I'm always
18 conducting transactions in the vicinity of my house, and
19 suddenly there's a transaction occurring a couple thousand
20 miles away. That would change the riskiness of that
21 transaction for us.

22 Q. And thinking just about the location information, is it
23 important that that information be accurate for Citi's decision
24 process?

25 A. It is.

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Steinbach - Direct

1 Q. And why is that type of information -- that accuracy
2 important?

3 A. It comes down to preventing fraud again. So there are
4 certain fraud rings that operate in a very tight geographic
5 area. So as we decide what we want to do about increased fraud
6 we may want to tighten the rules and strategies around a very
7 specific geographic area and not impact a larger subset of
8 customers, even if that's the same merchant or type of
9 business.

10 Q. And so how if at all is Citi impacted if false information
11 regarding credit card transactions is submitted into the
12 payment network?

13 A. So, again, we could have financial loss; we could subject
14 our clients to increased impact; and of course we could have
15 increased operational losses.

16 Q. Are there also potential legal implications?

17 A. There are, as I mentioned earlier, there are both legal
18 regulatory and reputational concerns with Citi if we don't get
19 it right.

20 Q. OK. What happens after Citi approves a credit card
21 transaction?

22 A. The credit card or -- sorry. When the transaction is
23 authorized, a message goes to that merchant to allow for the
24 transaction to proceed.

25 Q. And can you describe the flow of money after Citi approves

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Steinbach - Direct

1 the transaction?

2 A. There is a process by which the issuing bank settles with
3 the merchant. It usually happens overnight, on a nightly
4 basis, where the issuing bank, which is where the money is
5 coming from, as a loan to the customer, then provides that
6 particular merchant with the costs or the fees associated with
7 that transaction.

8 Q. And so, just to be clear, I think you said that the --
9 during the settlement process, the money comes from the issuing
10 bank, right?

11 A. Correct.

12 Q. And that's because for credit transactions it essentially
13 was a loan to the credit card holder; is that correct?

14 A. It is. It is a loan to that credit card holder, yes.

15 Q. So we just heard how Citi uses its decision engine to make
16 approval decisions for credit card transactions in realtime.
17 Right?

18 A. Correct.

19 Q. How else, if at all, does Citi use the output of the
20 transaction engine on the back end, after an initial approval
21 decision?

22 A. So we monitor all of the transaction data throughout the
23 day to identify trends, to see fraud spikes. Any anomalies
24 could be indicative of a number of things, could be indicative
25 of a sale, but could also be indicative of a fraud attack.

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1 Q. Are there certain metrics that can indicate fraud that Citi
2 looks for as part of that monitoring?

3 A. There are. There are dozens and dozens of metrics, yes.

4 Q. Can you give me a few, just a few examples?

5 A. So we look at something called the fraud rate. We look at
6 something called detection rate.

7 Q. Mr. Steinbach. I'm sorry. I'm having trouble hearing you.
8 Could you lean in a little bit?

9 A. Yes. So we look at a number of metrics. There is a metric
10 called customer impact, which talks about how many legitimate
11 customers we're impacting. There is something called the
12 detection rate. It's just that, a detection rate. There is a
13 fraud as a basis points of sale. And as I learned three, four
14 years ago, there are dozens and dozens or more very finite
15 metrics associated with the process.

16 Q. And you mentioned "detection rate." What does that mean?

17 A. "Detection rate" is how well we are doing our job detecting
18 fraud in our systems.

19 Q. And are you familiar with chargebacks?

20 A. I am.

21 Q. Is that also another indicator of fraud that Citi monitors?

22 A. So we would look at the write-offs, not necessarily the
23 chargeback. When a loss occurs, there is a gross fraud loss.
24 The amount of money we charge back to the merchants and get in
25 return results in the net fraud loss to Citi. So the net fraud

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1 loss is an important metric for Citi. That's ultimately how
2 much we lose as a bank.

3 Q. So that indicator, the write-off or the net fraud loss, is
4 directly tied to chargebacks; is that correct?

5 A. Yeah. As we see write-offs in a particular channel or
6 product or area increase, that's an indicator for us that
7 there's potentially more fraud in that area.

8 Q. And what does Citi do if it notices an uptake in one of
9 these indicators of fraud?

10 A. So we have these, as I mentioned, these very dynamic
11 strategies. We could go in and change the rules or strategies.
12 We could, we could tighten up the, the decision engines or the
13 risk scores to make it more difficult, to ensure that a true
14 customer was in fact making the purchase versus a fraudster, or
15 we quite frankly block or decline all types of those
16 transactions. There's a number of factors, from least
17 aggressive to most aggressive being denying the transaction,
18 that we could take.

19 Q. I think the first thing you mentioned there is you could
20 tighten the risk thresholds, right, and that that would make it
21 more difficult. Does that mean that it's more likely that Citi
22 would end up declining a transaction of that category?

23 A. Correct.

24 Q. And then you said that Citi can block merchants entirely?

25 A. Correct.

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1 Q. Under what sort of circumstances would it do that?

2 A. So it -- if we felt that there was a high rate of fraud
3 with that merchant, we have a number of actions we could take.
4 At the far end of the spectrum, we could go to the networks or
5 the associations Visa or MasterCard, and make a formal
6 complaint and ask them to investigate. The threshold for that
7 is that if 50 percent of all the transactions weren't
8 authorized, we have the ability to do that.

9 Much more, I guess, functional is our ability to block
10 internally in our engine, we could block all transactions or
11 authorizations from that particular merchant, or we could
12 assign a higher riskiness to a particular merchant.

13 Q. And again, assigning a higher riskiness would mean that
14 more transactions from that merchant would get declined; is
15 that right?

16 A. It's a factor. So that would be one factor in raising the
17 overall threshold for approval. Yes.

18 Q. So we talked before a little bit about chargebacks, right?
19 What does Citi do if a customer disputes a transaction?

20 A. So there's a dispute process that, when we get noticed from
21 the customer or an account alerts, that we follow a dispute
22 process.

23 Q. And what is the purpose of that process? What are you
24 looking for?

25 A. We are ultimately trying to decide whether it is a

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1 legitimate dispute, in other words, it's not the customer, a
2 fraudster, or in some cases not, not, not normally but
3 sometimes the customer is not being honest with us.

4 Q. And what does Citi look at to determine if, if there was
5 fraud involved in a transaction?

6 A. So it's initially a largely automated process. If we get
7 contacted by customer, we immediately close the card, and then
8 we follow a protocol. If it's not suspicious, we will go ahead
9 and either take liability, take the loss, or issue a chargeback
10 request to that particular merchant. In a smaller subset of
11 cases where we believe it's suspicious, we will investigate
12 that particular transaction.

13 Q. So I guess, first of all, what would you look at to decide
14 if you thought it was suspicious?

15 A. So the type of transaction, very broadly, say, for
16 instance, a card with a chip, a chip in it, was used at noon,
17 and then an hour later, it was used, and an hour after that it
18 was used. If the customer disputes that middle transaction, it
19 would be almost impossible for it not to be the customer,
20 because the customer had to have the card on both ends of it.
21 So that's a very simplistic example of, we believe in that
22 particular case the customer is not being truthful.

23 Q. So from what I'm understanding, it's fair to say you look
24 at maybe some of the specifics of the transaction, the
25 circumstances in which it occurred?

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1 A. We look at all the information we have, merchant, MCC,
2 date, time, customer behavior, customer history.

3 Q. And then if Citi decided that it did appear to be
4 suspicious, you said that they could -- it might investigate,
5 right?

6 A. Correct.

7 Q. And so what sort of things would Citi look at if it decided
8 it needed to investigate?

9 A. So there is an automated flow for this process. If it is
10 suspicious by a number of criteria, we will investigate. And
11 based on that investigation, we would either keep the charge
12 with the customer or, in most cases we will actually take it
13 off the customer's account.

14 Q. Can you describe for me generally what types of information
15 Citi might look at during its investigation?

16 A. So we look at where the purchase occurred, what the
17 merchant was, the amount of the transaction. We'll look at the
18 history of the transaction before and after. We will look at
19 the customer's behavior, the customer's background, transaction
20 history.

21 Q. And what would Citi do if it started receiving an
22 increasing number of disputes from cardholders about
23 transactions with a particular merchant?

24 A. This happens more and more frequently where the merchant, a
25 specific merchant is involved in a larger number of fraudulent

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1 claims.

2 Q. What would Citi do under those circumstances?

3 A. So if we believed that there was a larger fraud rate or
4 what we would call a collusive merchant, we would either,
5 again, three processes: we would either increase the risk
6 score, which we do to about 65,000 customers at a given time;
7 or we would completely block those merchants, which we do to
8 about 200,000 merchants; or in a very small number of cases we
9 refer to MasterCard or Visa.

10 Q. I think in there you mentioned that these are steps, among
11 other things, you might take if you discovered that -- if you
12 decided that a merchant was collusive. What do you mean by "a
13 collusive merchant"?

14 A. So it's an industry term kind of broadly used to suggest
15 that the merchant is involved in a higher-than-normal fraud
16 rate. Now, that doesn't mean that the merchant is a bad -- it
17 may be a victim. But it has to do with it as collusive and
18 it's helpful to the particular fraudster committing fraud.

19 Q. Are there any particular challenges Citi faces in trying to
20 identify illegal transactions coming over the network?

21 A. There are lots and lots of hurdles and difficulties in
22 identifying fraud, if that's what you're asking.

23 Q. And what are some of those hurdles?

24 A. Fraudsters are -- it's a big business. Fraud is about a
25 multimillion dollar business, but fraudsters continually are

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Steinbach - Direct

1 trying to trick us, trick customers, and identifying new ways
2 to steal money that doesn't belong to them.

3 Q. And specifically for illegal products, what are some of the
4 ways that, in your experience, merchants will go about trying
5 to process illegal transactions into the system?

6 A. So a merchant could, knowing that a particular product was
7 illegal, they could route it into the MCC, so that when we got
8 it, we would not recognize it for what it actually was or what
9 the MCC shows.

10 Q. And what are some ways that Citi might find out about
11 potential illegal card transactions?

12 A. So we find out of course through our internal system. We
13 have a very robust engine that we are constantly looking for
14 and identifying fraud within our systems. But we also have a
15 close relationship with a peer financial institution, law
16 enforcement, and other ways, the dark web. We look at a whole
17 host of areas to see if we can identify information that would
18 help us fight fraud.

19 Q. Do the fusion centers that you mentioned earlier come into
20 play there too?

21 A. Yes. The fraud view center, the cyber fraud view center,
22 is my collection point where they receive both internal and
23 external intelligence and help decide next steps.

24 Q. So what would Citi do if it discovered that a merchant was
25 involved in a type of business different than that represented

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Steinbach - Direct

1 by its MCC code?

2 A. We would file a SAR, most likely file a SAR. And speaking
3 to -- most likely file a SAR, block that merchant. And
4 probably report it to MasterCard and Visa and likely identify
5 it to some of our peer financial institutions.

6 Q. And you mentioned a SAR. What is a -- generally, just,
7 what is a SAR?

8 A. It's a suspicious activity report that we're required to
9 file, where we believe a crime may have occurred.

10 Q. And then you mentioned earlier that you have the ability to
11 block merchants, right?

12 A. I'm sorry?

13 Q. You mentioned earlier that you have the ability to block
14 merchants and you might do that under these circumstances; is
15 that right?

16 A. Correct.

17 Q. And does Citi maintain an active file of merchants that it
18 has blocked?

19 A. We do. Citi has what we call an internal negative file as
20 to where all of our blocked merchants are in that list. And
21 that list is fed into our decision engine.

22 Q. And what would Citi do if it discovered that a U.S.
23 merchant on the payment network was selling marijuana products?

24 A. We would block -- it would be difficult because there is no
25 code for marijuana products, but if somehow we were made aware

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Steinbach - Direct

1 of that situation, we would block the merchant from doing
2 business with Citi, by adding it to the negative list.

3 Q. And you mentioned that there's no MCC code for marijuana.
4 Right?

5 A. Correct.

6 Q. Is that true just for marijuana, or is that generally true
7 for illegal products and services, that there's no MCC code?

8 A. I don't know.

9 Q. Are there other types of illegal transactions you can think
10 of that don't have an MCC code?

11 A. Not off the top of my head, no.

12 Q. How about, is there an MCC code for purchasing other
13 illegal drugs, like cocaine and heroin?

14 A. No.

15 MR. BURCK: Objection, your Honor, asked and answered.

16 THE COURT: Overruled.

17 Q. You can answer the question.

18 A. No.

19 Q. Does Citi have any control over the transaction information
20 it receives through the Visa and MasterCard payment system?

21 A. We do not.

22 Q. Who determines what information is passed through the
23 system?

24 A. The networks, Visa or MasterCard, determine what
25 information we receive.

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Steinbach - Direct

1 Q. And when it comes to merchant-specific information, where
2 does that initially stem from? Who inputs the merchant name
3 and other information into the system?

4 A. I'm not sure I understand the question.

5 Q. I will move away from that.

6 So you said that the Visa and MasterCard determine the
7 information -- the amount of information that goes through the
8 system, right?

9 A. Yes. There are payment systems. There are payment rails.
10 We get what they provide to us.

11 Q. If you and Citi could get more transaction information,
12 would you want it?

13 A. Absolutely.

14 Q. Why?

15 A. The more specific information we have, the better we can
16 identify fraud and fight fraud.

17 MS. DEININGER: One moment, your Honor.

18 No further questions.

19 THE COURT: Cross-examination.

20 (Pause)

21 JUROR NO. 4: They're here.

22 THE LAW CLERK: Oh. Thank you.

23 MR. BURCK: Thank you, your Honor. May I proceed?

24 THE COURT: Yes.

25 MR. BURCK: Thank you.

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Steinbach - Cross

1 CROSS-EXAMINATION

2 BY MR. BURCK:

3 Q. Mr. Steinbach, my name is Bill Burck. I'm a lawyer for Ray
4 Akhavan. Can you hear me OK?

5 A. I can.

6 Q. OK. Thank you.

7 I want to start with your testimony about the credit
8 card transaction process.

9 A. Sure.

10 Q. And you testified that the credit card company -- I'm
11 sorry -- the issuing bank in the network, which would be Citi
12 in this particular case, Citi is the one that makes the
13 determination about authorizing or declining a transaction. Is
14 that right?

15 A. Correct.

16 Q. And the information that Citi has when it makes that
17 split-second decision includes a certain amount of information
18 that it receives through the network. Correct?

19 A. Correct.

20 Q. And that information includes the merchant's name. Right?

21 A. Correct.

22 Q. The location of the merchant?

23 A. Zip code, yes.

24 Q. I'm sorry?

25 A. Yes, the zip code.

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Steinbach - Cross

1 Q. The dollar amount of the transaction?

2 A. Yes.

3 Q. The MCC?

4 A. Yes.

5 Q. And then information from the card. Correct?

6 A. Information?

7 Q. From the card, the credit card.

8 A. The credit card holder, yes. Yes.

9 Q. Credit card -- the card number and things like that, right?

10 A. Yes.

11 Q. And that's all the information it has at the time that it
12 makes the decision, right, about whether or not to authorize or
13 decline.

14 A. No.

15 Q. What other information does it have?

16 A. So what you described is the information specifically
17 coming from the networks. There is, I think, as you alluded
18 to, there's information that's encrypted on the card that comes
19 from the card. There's also information in our database about
20 the customer and the customer transaction history.

21 Q. Right. And so about that particular customer, correct?

22 A. Correct.

23 Q. So there's information about the cardholder's prior use of
24 the card, right?

25 A. Correct.

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Steinbach - Cross

1 Q. So that helps you understand, is this a typical transaction
2 by the cardholder, right?

3 A. Correct.

4 Q. And one of the important things that you testified to --
5 that, I should say, that was important to Citibank in deciding
6 is whether or not the credit limit for the credit card is --
7 has been met, or hit.

8 A. Correct. That doesn't fall under fraud. It falls under
9 the policy rules that I mentioned, yes.

10 Q. The policy rules.

11 And in that split second, all of this information is
12 automated, correct?

13 A. Yes.

14 Q. Now, you testified on direct that Citi also has information
15 about the merchant's history and the merchant's business.
16 Right?

17 A. Correct.

18 Q. Now, is that information also included in this split-second
19 decision?

20 A. It is.

21 Q. And how is that done?

22 A. So our history of the merchants, in other words, what we --
23 our transaction history with the merchant, that's part of the
24 decision process.

25 Q. So if a merchant has appeared on the system before, that's

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Steinbach - Cross

1 what you -- that is important to you.

2 A. Yeah. A merchant that's got a long history of
3 transactions, a big box merchant, has less riskiness than for
4 instance a merchant that's only been on the system for a week
5 or so.

6 Q. Understood. So one of the things that's important is, how
7 long the merchant has been around.

8 A. Correct.

9 Q. In the system. Correct?

10 A. Correct.

11 Q. And the point that the credit -- that the issuing bank
12 makes the decision to authorize or decline, in some instances,
13 when it's declines, it will contact the customer, correct?

14 A. Correct.

15 Q. And either that can be by an email or by a text or by a
16 phone call, correct?

17 A. Yes.

18 Q. And you're familiar with that process, how that happens,
19 right?

20 A. I am.

21 Q. And when the issuing bank decides to contact the customer
22 to ask about a particular transaction, what types of questions
23 does the bank ask the customer?

24 A. It's very generic. So what you're describing is what we
25 call a pend transaction or a pending transaction. We

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Steinbach - Cross

1 essentially want to know --

2 Q. Mr. Steinbach, I'm sorry. Could you speak a little closer.
3 I'm having a real hard time hearing you today. I'm sorry.

4 A. So what you're describing is, at the time of transaction,
5 there are instances where we want to make sure it's the
6 customer, so we will pend the transaction. In other words, we
7 don't approve it until we hear back from the customer. And we
8 generally ask, is that you or is that not you. And then
9 depending on the response, we would --

10 Q. I'm sorry. You're going to have to speak again. We lost
11 you at the end.

12 A. All right. Sorry.

13 Q. Thank you. You said that "we" --

14 A. So --

15 Q. It's better, though, loud.

16 A. So at the time of the transaction, we will either make the
17 decision to approve it or decline it. And there are instances
18 where we're not quite ready to completely decline it, and so we
19 will reach out to the customer a lot of times through a text,
20 perhaps an email, maybe a phone call, where we will say
21 something along the lines of, can you verify this is your
22 transaction, click push 1 for yes or 2 for no. That will help
23 us make a determination as to whether, again, the fraud
24 strategies are all designed around, is it Mike Steinbach or is
25 it not Mike Steinbach. If it's Mike Steinbach, if I'm within

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Steinbach - Cross

1 the credit limit, I can do whatever I want.

2 Q. Understood. And you don't ask, or the bank, I should say,
3 doesn't ask the customer in those circumstances, what are you
4 buying. Right?

5 A. There could be instances where the customer calls in and
6 through the course of the scripts, additional questions are
7 asked. I don't have detail on what those questions would be.

8 Q. You're talking about a circumstance where the customer
9 calls up the issuing bank, right?

10 A. Yes.

11 Q. I'm talking about when the issuing bank affirmatively
12 reaches out to the customer through a text or through an email
13 or through a call. Does, in those circumstances, does the bank
14 ask, what are you buying?

15 A. So there are times, to your point where, although we reach
16 out via text or email or call, customers are wary. They will
17 not respond. They will call in themselves. So to answer your
18 question, I don't have 100 percent insight on all of the
19 questions asked in that particular situation.

20 Q. Do you know if the issuing bank asks the customer, are you
21 buying a legal or an illegal product or service?

22 A. The issuing bank, at least in Citi's case, does not ask
23 that question.

24 MR. BURCK: Your Honor, I see that we only have five
25 minutes left. I'm going to switch to a topic, it's probably

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1 going to take a while.

2 THE COURT: All right. So why don't we take a break.
3 Thank you very much.

4 THE COURT: Ladies and gentlemen, I wanted to give you
5 a heads up on our schedule. We're doing quite well. The
6 government expects to conclude its evidence sometime tomorrow.
7 The defense, of course, doesn't have to provide any evidence,
8 because, as you will recall, the burden is always on the
9 government to prove its charge beyond a reasonable doubt.
10 However, the defense has indicated that it may call some
11 witnesses. If that happens, hopefully that can be done on
12 Friday. In the worst case it will go over to Monday.

13 We will then have closing arguments of counsel and my
14 instructions of law. So the case will probably be yours late
15 on Tuesday. So a little later than I thought originally. We
16 lost a day here and there. But basically pretty good. And I
17 wanted to give you a heads up on that schedule.

18 So we'll see you tomorrow at 9:45.

19 (Jury not present)

20 THE COURT: Mr. Steinbach, you can step down. We'll
21 see you tomorrow at 9:45.

22 (Witness excused)

23 THE COURT: All right. So because I have another
24 in-court matter at 4, the marshals need to take Mr. Akhavan
25 back now. The one thing I think, if this is agreeable to

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1 Mr. Akhavan and his counsel, that I could take up in the next
2 few minutes is the question of the completeness of
3 Mr. Weigand's statement, which doesn't directly impact
4 Mr. Akhavan.

5 MR. BURCK: Yes, your Honor. That's fine with us.
6 Thank you.

7 THE COURT: Very good.

8 All right. So we were talking about the additional
9 statements that Mr. Weigand wanted to introduce, the first in
10 the -- after the government has introduced his statement and
11 it's not his email address, but he might have heard of it. And
12 the defense argues that the following should be added under the
13 rule of completeness: The FBI agent says, "Like where have you
14 heard of him? Whose email address is it, then? You're
15 connected in that world, right? So who's email address is it
16 if not yours?"

17 Mr. Weigand says, "I think I need to -- I don't know
18 how to continue this without having" -- and then it says
19 "unintelligible" but it's clear that he's asking for an
20 attorney from what follows immediately thereafter, because the
21 agent says, "Without what? Why?" And Mr. Weigand says,
22 "Without having legal advice. I don't know how to continue. I
23 don't know what the implication -- I've not done anything. At
24 least, I don't think that I've done anything that I shouldn't
25 have done or that's illegal, and the fact now it seems that

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1 this is -- on this I really don't know what I should do and
2 without having any advice on it."

3 And then the agent says, "Understood. So you want a
4 lawyer?" Mr. Weigand says, "Yes."

5 I don't see how any of that even remotely comes in
6 under the rule of completeness. So that will be denied.

7 Then we turn to the other portion that the government
8 wishes to introduce, which is that Mr. Weigand indicated that
9 he had some vague knowledge of Eaze, having seen it on
10 billboards and such, but no involvement in Eaze. And the --
11 I'm not sure what if anything the defense wanted to introduce
12 on that score. The one thing I have in my notes, and the one
13 thing I'm considering perhaps admitting is a statement that
14 comes earlier when the FBI agent asks Mr. Weigand, "You
15 understand English and speak English, right?" And Weigand
16 says, "I'm OKish, I think." It seems to me that that is
17 relevant to the jury in their overview of what force if any
18 should be given to these allegedly false statements that the
19 government is introducing.

20 So let me hear first from the defense if there's
21 anything I missed that they want to put in.

22 MR. ARTAN: Thank you, your Honor.

23 THE COURT: Take your mask off.

24 MR. ARTAN: Can you hear me OK?

25 THE COURT: Yes.

L3HAWEI6ps

1 MR. ARTAN: Good afternoon.

2 THE COURT: When you take your mask off, then I know
3 it's not Mr. Gilbert.

4 MR. ARTAN: I even shaved, so --

5 Your Honor, if I could just make a couple of
6 observations before I get into the specifics.

7 THE COURT: No. We have ten minutes.

8 MR. ARTAN: OK. I'll make it quick. But I just --

9 THE COURT: What else if any did you want to
10 introduce?

11 MR. ARTAN: Well, you know, I think -- one of the
12 things that's -- I will say, in terms of the case law, what's
13 unusual about this is that, in the cases, almost all the
14 sequences involve a defendant making admissions. And what's
15 different here is that the defendant is being accused of lying.
16 And that's, I think, critically important in the analysis here,
17 because the government is saying, in these particular passages,
18 he's lying about whether it's even email or not or he's lying
19 about how it is that he heard about Eaze. And it's our
20 position that that middle passage, where he's describing his
21 activities and what he has done, clarify and give context to
22 show that his statements were not lying.

23 THE COURT: Excuse me for interrupting.

24 (Discussion held off the record)

25 THE COURT: Go ahead.

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1 MR. ARTAN: So it's our view, your Honor, that the
2 context is important in a broader context than if it was just
3 simply an admission.

4 THE COURT: If I understand what you're saying, it
5 cuts the other way. If someone gives 14 truthful statements
6 and one big fat lie and the government introduces the big fat
7 lie, that doesn't open the door, under completeness or another
8 doctrine, to the 14 other statements, except in very unusual
9 circumstances that are not present here.

10 MR. ARTAN: Well, I think the cases say, if they're
11 intertwined, they should come in.

12 THE COURT: Yes. Well, you obviously have a much
13 broader view of what constitutes "intertwined." Here, in the
14 example we just went through, he says, "It's not my email
15 address. I might have heard of it, but it's obviously not my
16 email address." And then what you want to put in is his
17 request for counsel. How is that intertwined?

18 MR. ARTAN: We moved on from that. You had already
19 denied that, your Honor. I was talking about the middle
20 section.

21 THE COURT: All right.

22 MR. ARTAN: The middle section where he's describing
23 his other activities. And in that context, it helps clarify
24 the fact that he had other -- he's made his living productively
25 in completely different ways. I know in the motion in limine

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1 originally --

2 THE COURT: I think that's called hearsay. It
3 doesn't -- you know, it -- I -- it's very different from the
4 situation where I did allow you to put in the fact that the
5 undercover agent, who he still thought, in the government's
6 view, was a co-conspirator, put questions to him and didn't get
7 the answers that he wanted. He got exculpatory answers. There
8 I can see it is admissible as bearing on his intent. But here,
9 when he's being questioned by an FBI agent and he makes
10 protestations of innocence, that's about as clear an example of
11 hearsay as I know.

12 MR. ARTAN: But cases allow it to come in when it's
13 needed to provide the context.

14 THE COURT: How, I ask you again, what is it that's
15 providing the context?

16 MR. ARTAN: Well, one of the lies is supposedly
17 that -- whether or not EUprocessing is his email or not. OK.
18 That's supposedly a "big lie." We've had two witnesses
19 basically say that that email belongs to Andres. So there's a
20 lot of doubt as to whether it's a "big lie" or not.

21 THE COURT: That's a different question.

22 MR. ARTAN: I see that. But his comments, his
23 descriptions of the work he did and the other things he did,
24 lend support to contradict what it is that he's being accused
25 of lying about.

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1 THE COURT: No. I'm sorry. You have a much, much
2 broader view of the rule of completeness than I think is
3 supported by the case law. And I apologize, but we need to
4 move this along.

5 Let me hear from the government if you have any
6 objection to the one portion I was going to --

7 MR. FOLLY: Your Honor, we are prepared to offer the
8 portion that you referenced, "You understand English and speak
9 English, right?" "I'm OKish, I think."

10 THE COURT: Very good.

11 MR. ARTAN: One other question, your Honor?

12 THE COURT: Yes.

13 MR. ARTAN: I'm presuming that I can cross-examine the
14 agent about the conditions of the interrogation and things of
15 that sort.

16 THE COURT: You can question him about things like,
17 you know, did this occur in a small room or something like
18 that, but not about -- you can't use that as a device to say,
19 and did he say to you -- you understand that, right?

20 MR. ARTAN: I not only understand, I get it
21 completely. No, I just want to make sure -- the reason --

22 THE COURT: Then we are definitely communicating.

23 MR. ARTAN: The reason I ask is, the beginning talks
24 about *Miranda* rights and who they are, and it strikes me that
25 if there's three agents in the room, for instance, that's

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1 something I could ask about. If he's, you know, confronted
2 with what's going on, those are things I could talk about, not,
3 not --

4 THE COURT: I'll have to hear it question by question.

5 The general conditions under which he was being
6 questioned, whether they were stressful or something like that,
7 I think, would come in on the question of whether he was
8 consciously lying or just making a mistake or maybe not making
9 a mistake at all.

10 So, OK. Very good.

11 MS. LA MORTE: Your Honor, literally 30 seconds.

12 We would just put in a request. Can we file a letter
13 regarding the Circle matter? We think it would be helpful for
14 the Court.

15 THE COURT: Sure.

16 MS. LA MORTE: OK. That would be great. Thank you.

17 THE COURT: I may even read it.

18 No. Please, please, do that.

19 If you want to respond on the defense side, you may.

20 (Adjourned to 9:15 a.m., March 18, 2021)

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GOVERNMENT EXHIBITS

Exhibit No.	Received
22181932
7152002
4582006
3032008
25022084
2512 to 25152089

DEFENDANT EXHIBITS

Exhibit No.	Received
4031954
22071978
4432052
WX1192055
WX1022056
WX1032057
WX1072058